

IN THE

SUPREME COURT OF ILLINOIS.

THE ANARCHISTS' CASES.

BRIEF FOR THE DEFENDANTS.

LEONARD SWETT.

CHICAGO:
BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE STREET.
1887.

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MAY IT PLEASE THE COURT:

The record in this case embraces all the evidence in the trial below, and contains more than 8,000 pages of type-written matter. Of this an abstract has been made which contains about 500 pages. To get a comprehension of what these contain seems to be the work of months. In order therefore to present the facts and the legal questions arising, I have endeavored to collate and arrange from these, in reference to each defendant, all evidence for and against him, and afterwards to present some of the more prominent legal questions arising in the case.

The object of this has been to aid the court in grasping the case, and I hope I have succeeded.

THE CHARGES.

The indictment, so far as supported by proof, charges that the plaintiffs in error, (1) together with William Seliger and Rudolph Schnaubelt, on the fourth day of May, 1886, threw a bomb which killed Mathias J. Degan, and (2) that they aided, abetted, assisted, advised or encouraged some person unknown in throwing such bomb.

Our statutes, chapter 38 of 1874, sections 274 and 275 of the Criminal Code, are as follows:

SECTION 2. "An accessory is he who stands by, aids "or abets or assists, or who, not being present aiding, "abetting or assisting, hath advised, encouraged, aided or "abetted in the perpetration of the crime. He who thus "aids, abets, assists, advises or encourages, shall be con- "sidered as principal, and punished accordingly."

SECTION 3. "Every such accessory, when a crime is

“ committed within or without this state, by his aid or procurement in this state, may be indicted and convicted at the same time as the principal, or before or after his conviction, and whether the principal is convicted or amenable to justice or not, and punished as principal.”

The question is: Are these defendants guilty, under this indictment and this law?

This case comes here upon writ of error and superseas. The questions presented involve a review of the trial below. If the court finds that material error was committed there it will grant a new trial. If it finds no error it will affirm the judgment, and seven of the defendants will be hanged and one will go to the penitentiary for fifteen years.

Some of these have been guilty of intemperance, extravagance and foolishness of speech and foolish newspaper writing. Because of these facts, and the crime of a stranger in no way legally connected with them, they were found guilty of murder and sentenced to be hung.

They were tried in times and under circumstances of great popular excitement, and much irrelevant and unlawful evidence was introduced against them. Happily, however, under the laws of Illinois a person cannot be hung for foolishness of oratory or writing foolish newspaper articles; nor can one person be hung for the act of another. Therefore our motion for a new trial is based first upon the fact that

THE DEFENDANTS ARE NOT GUILTY.

The following shows the evidence for and against each defendant, with references to the record and abstract and brief. Where the letter “A” is used it refers to the

abstract, where "B" is used it refers to the argument of the plaintiffs in error, and where any other letter is used it refers to the record.

I.

OSCAR NEEBE.

He was found guilty of murder and sentenced to the penitentiary for fifteen years.

Evidence—nothing.

II.

SAMUEL FIELDEN.

Evidence for the prosecution.

The inculpatory evidence tends to establish the following propositions:

I.

HE MADE A SPEECH AT THE HAYMARKET MEETING.

He tried to illustrate that the law only protected the employer, and afforded no protection to the workingmen if they were injured in their interest. He spoke of the McCormick riot in the afternoon of the 3d of May, the day preceding the Haymarket meeting, on the *west side*, and said: "Men, in their blind rage, attacked McCormick's factory." (Rec., K, 282; Abst., 132.) By these words he meant the workingmen who had struck, had attacked the factory and other men who wanted to work there. In the course of his remarks he used the following expression: "You have nothing more to do with the law, except "to lay hands on it and throttle it until it makes its last

“kick; it turns your brothers out on the wayside, and
 “has degraded them until they have lost the last vestige
 “of humanity, and they are mere things and animals.
 “Keep your eye upon it, throttle it, kill it, stab it, do
 “everything to wound it or impede its progress.” (K,
 282; A., 132.)

II.

HE MADE THREATS.

(1.) OFFICER QUINN testifies (A., 14) that when the police came to the meeting he heard Fielden cry out, when *within about fifty feet* of him: “Here come the
 “blood-hounds of the police! Men, do your duty and I
 “will do mine.”

(2.) OFFICER HAAS, about *ten or fifteen feet* distant, heard the same remark, but he admits, on cross-examination, that although a witness before the coroner’s jury, held immediately thereafter, he did not testify to that remark (A., 128; K, 251, 268.)

(3.) STEELE heard *some one* say: “Here comes the
 “blood-hounds. You do your duty and we will do
 “ours,” the sound coming from in front of the line in
 which they were marching. (A., 13.)

(4.) OFFICER KRUEGER, when about twenty-five feet from the wagon, heard *some one* say something like the following. He should judge it came from the wagon, but is not positive. He thinks it was the speaker who said it: “Here they are now, the blood-hounds.” (A., 17.)

(5.) WESSLER heard: “Here comes the blood-
 “hounds,” but does not know who made the remark.

(A., 18.) It was made when his company was on the *Randolph street car tracks, about 100 feet distant.*

(6.) BOWLER heard *from somebody* close to the wagon: "Here come the blood-hounds." (A., 22.)

(7.) DOYLE heard the words: "Now is your time, now is your time;" *by somebody* looking like Fielden. (A., 25.)

Two witnesses, one away about fifty feet and the other ten or fifteen feet away, heard Fielden make these remarks. *Five* heard *some one* make the remark, or *think* it was Fielden.

III.

FIELDEN FIRED INTO THE POLICE.

(1.) QUINN also swore (A., 14) that after the order for the dispersion of the meeting had been given by Captain Ward, Fielden, *still standing on the wagon*, drew a revolver and shot at Captain Ward, Captain Bonfield and Lieutenant Steele, grouped together from four to six feet from him. Just before such shooting Fielden said: "*We are peaceable.*" Witness then dropped his club and discharged his revolver. Immediately, then, the bomb exploded. Fielden, therefore, was at the same moment for war and for peace.

IV.

AN ATTEMPT TO SHOW FIELDEN FIRED TWO OR THREE SHOTS.

(1.) KRUEGER (1, 245; A., 17). Officer Krueger swears after Fielden got down he stepped one step

north of the south end of the wagon, and fired two shots at the column of police. Krueger then saw Fielden in the crowd and shot Fielden. Fielden staggered, but did not fall to the ground, and ran towards the alley. (Rec., Vol. 1, 234 and 235; Abst., 17.)

(2.) WESSLER swears after the bomb exploded he ran north on the sidewalk to Crane's building, about thirty feet, then hearing the order "Fall in," he ran back; saw Fielden *behind the wagon* get up and down twice and shoot at the police; then Wessler shot Fielden and he *fell under the wagon.* (251, 252.)

(3.) FOLEY saw Officer Wessler shoot a man who was lying *under the body of the wagon, between the fore and hind wheels.* (268 to 275; 19, 20.)

(4.) BAUMANN swears he saw Fielden shoot once from *east to west while standing on the sidewalk*; saw Fielden for the first time that night; asked some other officers who the man shooting was, and they said Fielden. (296, 302, 303; 22 and 23.)

(5.) HANLEY swears he saw Fielden fire one shot and then run with the crowd toward the alley. (Vol. 1, 307, 308; 23.)

(6.) SPIERLING (Vol. L, 341 to 343; 26) swears that after the bomb exploded he saw Fielden *get off the wagon* and fire a shot. Fielden was *standing behind the wagon*, on the sidewalk, and shot west.

There were more Richmonds in this Haymarket field, in more places and going in more directions, than the disordered fancy of Richard pictured on the field of Bosworth.

This is all the inculpatory evidence against Fielden.

Evidence for the defense.

I.

FIELDEN'S SPEECH, THREATS AND SHOOTING.

(1.) FIELDEN (A., 268; M, 319) did not know there was to be any Haymarket meeting or that there was to be any attack upon it by the police, or any resistance to such attack, or any bomb thrown, or any occasion for throwing it; he was there by accident, and the facts, as shown by proper references to the evidence, are that Fielden on the 4th of May *was attending another meeting*, held on the south side of the city, at 107 5th avenue (M, 340; A., 272), or as it is sometimes called, the Arbeiter Zeitung building, and went over to the Haymarket meeting after its adjournment, pursuant to a request for speakers.

Witnesses who testify in effect that Fielden did not make threats are Patterson (M, 42 and 44, A., 228), Snyder (M, 101, A., 235), Brown (M, 120, 123, A., 238), Waldo (M, 268, A., 245), Mrs. Holmes (M, 279, 280, 281, A., 261), Parsons (M, 110, A., 313.)

When he arrived at the Haymarket, Spies was speaking, but concluded in a few minutes; then Parsons spoke, and after him Fielden made a short speech. When he had said "in conclusion," he was interrupted by the appearance of the police. He denies having made the remark about the bloodhounds and the police.

(2.) FREEMAN, an Inter Ocean reporter, eight or ten feet from Fielden, did not hear the remark attributed to Fielden by Quinn.

(3.) HULL, a reporter for the News, did not hear the remark attributed by Quinn to Fielden. (K; A., 107.) Capt. Bonfield and Capt. Ward, who were the officers in command, and who were ahead of their companies and nearer Fielden, did not hear any threats of Fielden.

The following witnesses, all of whom were immediately about Fielden, swear he did not make such a remark at all as sworn to by officer Quinn and others, to wit, "Here come the blood-hounds of police; men, do your duty and I do mine," or any other similar remark; they must have heard the remark if made. These witnesses are (1) SIMONSON (A., 178; Vol. L, 69), (2) RICHTER (A., 187; Vol. L, 183), (3) LIEBEL (A., 189; Vol. L, 201), (4) TAYLOR (A., 190; Vol. L, 229), (5) GUTSCHER (A., 198; Vol. L, 302), (6) URBAN (A., 202; Vol. L, 350), (7) LINDINGER (A., 215; Vol. L, 474), (8) HEIDEKRUEGER (A., 222; Vol. L, 546), (9) HALLOWAY (A., 230; Vol. M, 61), (10) SNYDER (A., 237; Vol. M, 111), (11) MURPHY (A., 256; Vol. M, 243), (12) BACH (A., 281; Vol. M, 406), (13) INGRAM (A., 288; Vol. M, 452), (14) SPIES (A., 303; Vol. N, 55), (15) FIELDEN (A., 269; Vol. N, 321). Here are fifteen unimpeached witnesses.

(4.) ENGLISH, the reporter for the Tribune, was instructed by the officers of that company to take only the most sensational of the speeches. He took notes in shorthand; his notes do not show that Fielden made this remark. (A., 134; K. 287.) There were other reporters for other papers, and no other reporter's testimony contains any allusion to this remark. *We say, therefore, he did not make the remark.*

Fielden, if he shot, shot into three men, to wit: Bonfield, Steele and Ward, standing in a group at from four to six feet from him, must have hit some one of them, yet

he did not hit either of them, and they did not see him fire or feel his bullet. (I, 24; A., 2.) He was heard to make threats by people at a distance, but eighteen witnesses immediately about him, three of whom he shot at, didn't hear him, and no one taking shorthand notes immediately about him heard threats, their notes show no threats, although to get such things was what they were there for.

II.

FIELDEN DID NOT SHOOT AT ALL.

(1.) WILLIAM H. FREEMAN, a witness for the state, and reporter for the Inter Ocean (A., 106, 107; Vol. K, 41, 42, 48, 50), stood on the sidewalk, near the speaker's wagon and Crane Brothers' building, within three or four feet of the wagon. When firing commenced he crouched behind the wagon; *there was no shooting between him and the wagon.* Police officers stood by the wagon with pistols over it, and one time pointing at him. He didn't see Fielden shoot at all.

(2.) WILLIAM SNYDER (A., 236) was on the wagon while Fielden was speaking, and when the order to disperse was given. He then stepped down, called to Fielden to get down; helped Fielden down. Bomb exploded while Fielden was getting down; *Fielden did not shoot;* Fielden had no revolver, did not fire at police officers, or any one else; stayed with Fielden with his hand on him until he reached the mouth of the alley, where they separated.

(3.) FRANK STENNER: Stood at the east side of the wagon, close to Crane Bros.' building; no shot was fired from the wagon before the bomb exploded; he *was*

looking at Fielden when he dismounted from the wagon, but did not see him shoot. (A., 196.)

(4.) Dr. JAMES TAYLOR (A., 190) stood within a few feet of the wagon; saw Fielden on the wagon; remained in this position until explosion of the bomb; he did not see Fielden draw a revolver or shoot at police, *he watched him* as long as he could see him. (A., 190; Vol. K, 230, 231.)

(5.) CONRAD MESSER (A., 208) stood at the north-east corner of the wagon; saw Fielden during all the time. *Fielden had no pistol in his hand; did not see him fire at all.*

(6.) JOHN HOLLOWAY (A., 229, 230) stood near lamp-post south-east corner of alley and street; *saw no firing coming from the direction of the wagon; did not see Fielden shoot.*

(7.) SLEEPER T. INGRAM (A., 287, 288) stood on sidewalk near steps of Crane's building, just east of wagon, saw Fielden when the police came up and bomb exploded, *did not see Fielden have a revolver or fire a shot.*

(8.) FIELDEN'S TESTIMONY. Never carried a revolver, did not have one that night, did not fire at all, never fired at any person, did not fire from behind the wagon, did not stay there at all. (Abst., 268; Vol. M, 319.) Got down from the south end of wagon after order of dispersion from Capt. Ward, started south-east direction (A., 267); just as he got to sidewalk, explosion came, rushed with the crowd to get some protection; made a dash to north-east corner of Randolph and Desplaines; turned the corner and ran to Jefferson. Fielden offered to swear that at the coroner's inquest, held immediately after the Haymarket meeting, he was present at the examination of

the officers, who testified in this trial that he shot once or more, *and those officers did not mention at all the fact that he shot in their testimony at that examination, although that examination was held the next day after the Haymarket, and when the facts were fresh in the minds of these witnesses.* The court excluded this offer, and plaintiff excepted. (A., 277.)

Therefore, *seven witnesses*, who were immediately about Fielden, and watching him, saw no movement indicating shooting, and Fielden swears he had no revolver and didn't fire at any one.

III.

ALBERT R. PARSONS.

The Criminating Evidence.

Mr. PARSONS was present at the Haymarket meeting. It is claimed he there used the expression as stated by some witnesses for the state: "To arms! to arms! to arms!" * * * (A., 131; K, 281.) "It behooves "you as you love your wife and children, if you do not "want to see them perish with hunger, killed or cut down "like dogs on the streets, Americans, in the interest of "your liberty and your independence, to arm, to arm "yourselves." (Applause and cries, we will do it, we are ready now.) "*You are not.*" * * * "*I am not here "for the purpose of inciting anybody, but to speak out, to "tell you the facts as they exist, even though it shall cost "me my life before morning.*" This is all the criminating evidence against Parsons, and he, too, is for peace and war, both at the same time.

This is all the evidence against Parsons.

Exculpatory Facts.

Parsons had just been in Cincinnati and returned to Chicago on May 4th. (A., 313; Vol. N, 109.) He caused a notice calling the meeting at 107 5th avenue, *on the south side*, on Monday morning, May 4th, to be inserted in the Daily News. He left home in company with his wife, Mrs. Holmes, a lady friend and his two little children. On his way to that meeting he met Mr. Owen, a witness for the state, who says (A., 124; K, 200, 201): "I saw " Parsons at the corner of Halsted and Randolph " streets shortly before 8 o'clock; I asked him where " the meeting was to be held; he said he did not " know anything about the meeting; I asked him " whether he was going to speak, he said no; he was " going to the south side. Mrs. Parsons and some children " came up just then, and Parsons stopped an Indiana street " car, slapped me familiarly on the back, and asked if I " was armed, and I said, no; have you any dynamite about " you? He laughed, and Mrs. Parsons said, 'he is a very " dangerous looking man, isn't he?' And they got on a " car and went east. I believe Mr. Heineman was with " me." (A., 126; Vol. K, 233.)

A request for speakers at the Haymarket meeting was sent over to the meeting *on the south side*. That request found Parsons; he went from there to the Haymarket on the west side to speak.

In the course of his speech at the Haymarket meeting which was statistical in character, Parsons spoke of Jay Gould; some one in the audience cried out, "hang him!" Parsons replied, in substance, "*no, this is not a conflict between individuals, but for a change of system, and socialism desires to remove the causes which produce*

"the pauper and the millionaire, but does not aim at the life of the individual." He also said that if Jay Gould were killed, another or a hundred would come up in his place like a jack-in-a-box; he also said that, to kill the individual millionaire would be like killing the flea on the dog, whereas, the purpose of socialism was the destruction of the dog himself—a change of the present system. (A., 320; N, 136.) These expressions are also proven by Simonson (A., 177; L, 65), Ferguson (A., 182; L, 130, 131), Gleason (A., 203; L, 361), Snyder (A., 236; M, 139), Bach (A., 282; M, 410), Freeman (A., 105; K, 40).

Parsons spoke three-quarters of an hour. Mr. English, the Tribune reporter, *was instructed by his employers to take only the most inflammatory utterances*, and consequently was on the watch for such. His account of Parsons' speech occupies but a single page of this record. Parson's gives an account of this speech (A., 315-320; Vol. N, 118 to 136).

Mayor Harrison, who heard Parsons' speech and attended the meeting for the purpose of dispersing it, if anything should occur to require interference, left the meeting at the end of that speech and told Captain Bonfield, at the station, that "nothing had occurred yet, or "looked likely to occur to require interference, and that "he had better issue orders to his reserves at other stations to go home, whereupon Harrison himself went "home." (A., 174 and 175; L, 29, 31, 47.)

After Parsons, Fielden spoke twenty minutes. After Mr. Fielden had been speaking some ten minutes, it is admitted by all the witnesses, that a cloud, accompanied by a cold wind, swept over the northern sky, and thereupon Parsons interrupted Fielden, suggesting an adjournment

of the meeting to Zepf's Hall, in a building situated at the north-east corner of Lake and Desplaines, and half a block from the Haymarket meeting. To this somebody in the audience replied that the hall was occupied by a meeting of furniture-workers, and thereupon *Fielden suggested that he would be through in a few moments, and then they would all go home.* (A., 314; N, 113.) This fact is established by witnesses for the defense and prosecution, among others as follows: Freeman (A., 108; K, 51, 52), Heineman (A., 127; K, 246), English (A., 132, 133; K, 282), Simonson (A., 178; L, 66, 67), Richter (A., 187; L, 184), Urban (A., 201; L, 343), Ingram (A., 287, M. 447).

About one-half the audience dispersed upon Parsons' motion and Fielden's suggestion. Parsons got down from the wagon and went a few feet north, where his wife and Mrs. Holmes were, and they went together to Zepf's Hall.

At the time of the explosion of the bomb after the Haymarket meeting, Parsons, together with his wife and Mrs. Holmes, was in Zepf's saloon.

This is substantiated by the following witnesses: Michael Malkoff (A., 224), Thomas Brown (A., 238; M, 125), Wandray (A., 248; M, 192), Lizzie M. Holmes (A., 261; M, 284, 285), Ingram (A., 287; Vol. M, 448), Parsons' testimony (A., 314, 315; N, 114, 116). No effort was made by the prosecution to refute this testimony.

The mayor of the city, in whose hands, by the laws of the state and of the city, the peace of the city is reposed, stood in the crowd for the purpose of seeing whether the meeting should be interfered with, and must have heard him say: "*I am not here for the purpose of inciting any one.*" This is not "*a conflict between individuals*"—it

"does not aim at the life of the individual." He then went to Capt. Bonfield of the police and told him he had better order his reserves home, and went home himself, and yet this man, on this, as the only legitimate evidence, has been found guilty of murder, and sentenced to be hung.

IV.

MICHAEL SCHWAB.

Criminative Evidence.

M. M. THOMPSON (A., 134, 137) swore that on the evening of May 4th, at the Haymarket, AFTER EIGHT O'CLOCK, HE SAW SPIES AND SCHWAB WALK FROM THE WAGON USED AS A SPEAKER'S STAND INTO THE ALLEY SOUTH OF CRANE BROS. (K, 288); there was a crowd there. Thompson stood three feet north of the alley, up against the building (K, 291, 292); from this position he heard a conversation between *Schwab and Spies* in the alley; admits he had never seen either before, never heard either speak, except he heard Spies from the wagon inquire for Parsons. He heard in a conversation between them the word "*pistols*" and the word "*police*" twice, the last remark about a minute and a half after Spies and Schwab went into the alley and *out of sight* (K, 295); he drew up within a foot of the alley when Spies said, "do you think one is enough, or don't you think we had better go and get more?" (K, 294.) Heard nothing more. Spies and Schwab came out of the alley, walked on Desplaines to Randolph, west on the north side of Randolph to Halsted, crossed Halsted diagonally to the south-west corner of the street, remained

there about three minutes. On their way back as they neared Union he heard the word "*police*" again, and at that moment he passed them, Schwab saying, "Now, "if they come, we will give it to them." Spies replied "they were afraid to bother with them." On the north-west corner of Desplaines and Randolph he halted and they passed him, going diagonally across Desplaines in a north-easterly direction and reaching the sidewalk about twenty feet south of the alley; he followed them across Desplaines street, but went a little more south, reaching the sidewalk ten or fifteen feet south of them, when a third party stepped from the wall of the building towards the center of the sidewalk and the group there stood Spies facing south and directly facing Thompson, Schwab was facing north and the third man facing west. Something passed between Spies and the third man, which he could not see. The third man took it and put it in his right-hand coat pocket, they then went to the wagon; Spies got up and the third man after him. Witness was shown a photograph of Schnaubelt and said he thought the third man was he. (K, 289, 290.)

Thompson admitted that he did not understand German, and said that all these conversations were carried on in English, although the men were Germans.

Exculpatory Evidence.

(1.) SCHWAB says (A. 294, 296) that on the evening of the 4th of May he left his home, 51 Florimond street, *at twenty minutes to 8 and went to Arbeiter Zeitung office, reaching there about 8:* while there a telephone message was received asking Spies to speak at Deering's factory, and Schwab's purpose in going to Haymarket was to get Spies to respond to this call; he went to the Haymarket,

looked for Spies but failed to find him and took a car for Deering's factory himself. He went over on Washington street, turned north on Desplaines across Randolph, and north of Randolph on Desplaines, met Schnaubelt and talked with him about the Deering meeting, took an east bound car to the court house, and at the court house a Clybourn avenue car for Deering's factory. At the car stables he was met by Preusser. *The time required to go from the Haymarket to the court house was ten minutes. The time required to go from the court house to the Haymarket, the same distance, would also be ten minutes.* Fixing 8 o'clock as the time Fielding arrived at the Arbeiter Zeitung office, near the court house, he could not have reached the Haymarket until ten minutes past 8. The time required to go from the court house to Fullerton avenue, is forty-five minutes, and from the Haymarket to the court house, ten minutes; he went with Preusser to 888 Clybourn avenue to see a committee, but not finding them, went on to the prairie at the corner of Fullerton and Clybourn avenues where he met the committee, talked with them a few minutes, mounted the stand and spoke twenty-five minutes. After the meeting was over he returned with Preusser to a saloon, took some beer and lunch and then a car for the south side, leaving that car at Willow street and walked home. This occupied twenty minutes, and he reached home at 11 o'clock. *While at the Haymarket, he did not enter Crane's alley with Spies; had no conversation with him near the mouth of any alley; did not walk that night with Spies on Randolph street west to Halsted and back to the wagon; did not see Spies meet Schnaubelt; did not see or speak to Spies at all that night at Haymarket; did not say any thing to him about pistols or police, or whether*

one would be enough, had no such conversation with anybody at Haymarket: did not say to Spies or any one else we were ready for them, or would give it to them. He met Heineman and asked for Spies, *he took the car about half-past 8 on Randolph street for the court house, and the Clybourn avenue car about twenty minutes to 9.* The character of his errand at the Haymarket makes the spending of ten minutes there sufficient for such errand. He didn't go there to attend the meeting or to speak, but simply to find Spies. It was before the meeting began, and there were few people. He moved about the crowd a few minutes, and not finding him, hastened to the meeting himself, which was over an hour's ride away. Schwab must have arrived at the meeting about twenty minutes past 8, and must have left about half-past 8. That Schwab was at 107 5th avenue, or Arbiter Zeitung office, and received a telephone call for Spies first and went to Deering factory himself is testified to by Patterson (A. 228; M, 42); Waldow (A. 245; M, 168); Bach (A. 279; M, 398, 399); and Fielden (A., 265, M, 307); that a telephone message was sent from Deering to Arbeiter Zeitung is testified to by Preusser (A., 248, 249, M, 197, 200).

That Schwab was seen at the corner of Randolph and Desplaines street, as sworn to by him, is testified to by

(2) HEINEMAN, a Tribune reporter and witness for the prosecution (A., 126; K, 232);

(3) OWEN, a reporter for the Times (A., 124; K, 202).

(4) HERMAN BECKER (A., 250) *swears, about 8 o'clock Schwab came south on Desplaines street and took an east bound car on Ranpolph; that he was at Dcering factory and spoke there,* is testified to by Edward Preusser (A., 249, M, 200); Fritz Stettler (A., 250); Will-

iam Radtke (A., 221); Dietrich Behrens (A., 222); he remained at Deering three-quarters of an hour to an hour, having reached there half-past 9 to twenty minutes to 10, he did not leave Deering until half-past 10, and that *the time which would be required to go to the Haymarket was an hour after leaving Deering.*

(5) AUGUST SPIES: He arrived at the Haymarket about twenty-five minutes after 8 with his brother Henry. No meeting was in progress; he selected a wagon as a speaker's stand, mounted the wagon, called the crowd together and inquired for Parsons. (A., 299; N, 33.) Some one in the crowd replied that Parsons was speaking at the corner of Halsted and Randolph; he got down from the wagon; went with his brother Henry, Ernest Legner and Rudolph Schnaubelt, and started to find Parsons. Schwab was not with him, and Schnaubelt told him that he had gone to Deering. *He did not go to Crane's alley; did not converse there with Schwab or any one else about pistols or police;* he went from the wagon south-westerly and obliquely across Desplaines street to the corner of Haymarket, and from there west on Randolph a little beyond Union; not seeing Parsons he returned to the wagon; *had no conversation with Schwab at the corner of Union, or any one else, in which there was a suggestion of being ready for them, or giving it to them, or anything of that kind.* He did not meet Schnaubelt on the sidewalk south of the alley on Desplaines street, but Schnaubelt was with him in walking from the wagon to Randolph, west on Randolph and back to the wagon.

(6) HENRY W. SPIES (A., 240, 241) corroborates his brother fully. After inquiring for Parsons from the wagon, his brother then got down from the wagon,

walked south-westerly toward the north-west corner of Desplaines and Randolph, *and did not go in the direction of Crane Bros.' alley.*

(7) WILLIAM SAHL (A., 205): Stood south-westerly from the wagon. Saw Henry Spies and his brother as they passed him; knows Schwab—did not see him with Spies on the wagon or afterwards; *he was not in group of men who accompanied Spies.*

(8) CARL RICHTER (A., 186, 187): Had been acquainted with Spies more than a year previous to the Hay-market meeting; he stood at that meeting *at the mouth of Crane's alley.* Spies was at that meeting; called for Parsons; left the wagon; *he did not see him enter the alley although there was nothing to prevent him from seeing him if he had gone there;* he was there with Robert Lindinger and remained with him for the evening.

(9) ROBERT LINDINGER (A., 215): Was with Richter *at the mouth of Crane's alley,* midway between the two sidewalks, *and did not see Spies or anybody else pass into the alley.* Never saw Schwab before he testified; saw Spies leave the wagon after asking for Parsons, and return to it after five or ten minutes, and then open the meeting.

(10) FREDERICK LIEBEL (A., 188): Was by the lamp-post, at the corner of the alley, when Spies inquired for Parsons; he then left the wagon; knew Schwab by sight, did not see him, on or near the wagon, when Spies made his inquiry; did not see him that night, *did not see Spies go to alley.* The lamp was lighted and was light enough to notice faces.

(11.) OFFICER COSGROVE for the prosecution (A.,

120, 121; K, 167) testified: "When Spies got on the wagon first, he called out twice whether Parsons was there, and told some one in the crowd to go and find Parsons. He said Fielden would be here later. *He got down and went in a sothwesterly direction*; he came back in a short time and commenced speaking."

(12.) OFFICER McKEOUGH, also for the prosecution, (A., 122; K, 176): "Spies got on the wagon and called out twice is Parsons here; he received no answer and said never mind, I will go and find him myself. Somebody said, let us pull the wagon round on Randolph street and hold the meeting there. Spies said, we may stop the street cars; *he started away then and Officer Myers and myself followed him as far as the corner* (corner of Randolph and Desplaines streets)."

If Officers Myers and McKeough followed Spies, did they not know where he went, and that he did not go into the alley with Schwab? And yet when these officers were following Spies was the only time he left the wagon. Therefore *we* have two witnesses for the prosecution who followed Spies and know most positively, and testify in effect, he did not go into the alley with Schwab.

(13.) MR. ENGLISH, the Tribune reporter, (A., 129; K, 274): He was present when Spies got on the wagon and that he got off the wagon and went over toward Randolph street. "As he passed me in coming back, I asked him if Parsons was going to speak."

(14.) BRAZELTON, reporter of the Inter Ocean, was named by Thompson as the man who pointed out Schwab. Brazelton's name was endorsed on the back of the indictment, yet Brazelton was not produced as a witness, even when the state was notified to produce him.

The testimony also shows without contradiction, that *Spies and Schwab were both Germans. It was offered by the defendants to prove they were in the habit of carrying on their personal conversations in their native tongue, which offer was rejected by the judge, and to his ruling an exception was preserved.* (N, 56; A., 303.) Could anything be practically more pertinent or important than this testimony thus offered, and refused by the court? Suppose one of your Honors and myself, both intensely American, were in Paris to-night, and were conspiring to attack the police, and were talking together. We would say, "Let's give the police fits to-night." Imagine us Americans conspiring in French and saying, "*Allons attrapper les gendarmes.*"

The only motive in making the threats in French would be to have those threats known, and if we did anything to have ourselves caught and punished.

So long as the righteous and not the wicked are as bold as a lion, so long as crime in its tendencies gravitates towards secrecy and concealment, so long this story of conspiracy in a foreign city and a foreign language, when one's own language would conceal the very conspiracy, so long, I say, this story will be false.

Again: It is said these defendants were foreigners. They were scarcely naturalized, if at all. Any two men raised until maturity in Germany, and speaking that language as their native language, the very excitement of the occasion would have thrown their language into the German. Our instincts and habits of life arise in excitement. This is true of animals and of men. The eagle or hawk, when suddenly come upon, flies, because it is his nature to fly; the fox runs for his hole for the same reason. It was by this law that the lone fisherman, on the

banks of a stream, discriminated, without a single mistake, between eels and snakes. Laying his catch down on the banks, those that wriggled for the river he put in his basket for eels, and those that wriggled for the stone-heaps he killed for snakes.

V.

AUGUST SPIES.

Inculcating Evidence.

We should herein call attention:

(1.) To the evidence of Thompson before given in the inculpatory evidence against Schwab, so far as it affects Spies.

(2.) His speech at the Haymarket meeting. The prosecution introduced Mr. English, who read from his short-hand notes the following as Spies' speech (A. 129; K, 276):

"Gentlemen and fellow-workmen: Mr. Parsons and
 " Mr. Fielden will be here in a very short time to address
 " you. I will say, however, first, this meeting was called
 " for the purpose of discussing the general situation of the
 " eight-hour strike, and the events which have taken
 " place during the last forty-eight hours. It seems to
 " have been the opinion of the authorities that this meet-
 " ing has been called for the purpose of raising a little
 " row and disturbance. *This, however, was not the inten-*
 " *tion of the committee that called the meeting.* The
 " committee that called the meeting wanted to tell you
 " certain facts of which you are probably aware. The
 " capitalistic press has been misleading, misrepresenting

"the cause of labor for the last few weeks, so much so";
 "there is something here unintelligible that I cannot
 "read. Some of it went off on the side of my pocket.
 "The next is: "Whenever strikes have taken place;
 "whenever people have been driven to violence by the
 "oppression of their"—something unintelligible—"Then
 "the police"—a few unintelligible words, then there were
 "cheers—" But I want to tell you, gentlemen, that these
 "acts of violence are the natural outcome of the degra-
 "dation and subjection to which working people are sub-
 "jected. I was addressing a meeting of ten thousand
 "wage slaves, yesterday afternoon, in the neighborhood
 "of McCormick's. They did not want me to speak.
 "The most of them were good, church-going people.
 "They didn't want me to speak because I was a socialist.
 "They wanted to tear me down from the cars, but I
 "spoke to them and told them that they must stick to-
 "gether,"—some more that is unintelligible—"and he
 "would have to submit to them if they would stick to-
 "gether." The next I have is, "They were not anar-
 "chists, but good, church-going people; they were good
 "Christians. The patrol wagons came and blood was
 "shed." Some one in the crowd said, "Shame on them!"
 The next thing I have is, "Throwing stones at the facto-
 "ry; most harmless sport." Then Spies said, "What
 "did the police do?" Some one in the crowd said,
 "Murdered them." Then he went on, "They only came
 "to the meeting there as if attending church." * * *
 "Such things tell you of the agitation." * * *
 "Couldn't help themselves any more. It was then when
 "they resorted to violence." * * * "Before you
 "starve." * * * "This fight that is going on now
 "is simply a struggle for the existence of the oppressed

“classes.” My pocket got fuller and fuller of paper, my notes got more unintelligible, the meeting seemed to be orderly; I took another position in the face of the speaker, took out my paper and reported openly during all the rest of the meeting. So far as it goes it is verbatim, except the pronouns and the verbs are changed.

The balance of Spies’ speech is as follows (reading):
 “It was said that I inspired the attack on McCormick’s.
 “That is a lie. The fight is going on. Now is the
 “chance to strike for the existence of the oppressed
 “classes. The oppressors want us to be content. They
 “will kill us. The thought of liberty which inspired
 “your sires to fight for their freedom ought to animate
 “you to-day. The day is not far distant when we will
 “resort to hanging these men.” (Applause, and cries of
 “Hang them now.”) “McCormick is the man who
 “created the row Monday, and he must be held respon-
 “sible for the murder of our brothers.” (Cries of “Hang
 “him.”) “*Don’t make any threats—they are of no*
 “*avail. Whenever you get ready to do something, do it,*
 “*and don’t make any threats beforehand.* There are in
 “the city to-day between forty and fifty thousand men
 “locked out because they refuse to obey the supreme will
 “or dictation of a small number of men. The families of
 “twenty-five or thirty thousand men are starving because
 “their husbands and fathers are not men enough to with-
 “stand and resist the dictation of a few thieves on a grand
 “scale, to put out of the power of a few men to say
 “whether they should work or not. You place your lives,
 “your happiness—everything, under the arbitrary power
 “of a few rascals who have been raised in idleness and
 “luxury upon the fruits of your labor. Will you stand
 “that?” (Cries of “No.”) “The press say we are

“Bohemians, Poles, Russians, Germans—that there are
 “no Americans among us. That is a lie; every honest
 “American is with us. Those who are not are unwor-
 “thy of their traditions and their forefathers.”

Spies spoke fifteen or twenty minutes. What I have given here would not represent more than five or six minutes of actual talking.

Spies also under circumstances hereafter stated, wrote the revenge circular, which was as follows:

This circular was found in Spies' handwriting, in the Arbeiter Zeitung office, by the officers of the prosecution in their search of the premises, next day after the Haymarket meeting. It was preserved and on the trial introduced in evidence. We therefore claim that this was *unlawful* evidence. Its unlawful feature will be discussed hereafter.

(4.) REVENGE CIRCULAR.

(I A., 141.) “Workingmen! To arms! Your mas-
 “ters sent out their blood-hounds—the police—they
 “killed six of your brothers at McCormick's this after-
 “noon. They killed the poor wretches, because they,
 “like you, had courage to disobey the supreme will of
 “your bosses. They killed them because they dared ask
 “for the shortening of the hours of toil. They killed
 “them to show you ‘free American citizens’ that you
 “must be satisfied and contented with whatever your
 “bosses condescend to allow you, or you will get killed!

“You have for years endured the most abject humili-
 “ations; you have for years suffered immeasurable
 “iniquities; you have worked yourselves to death; you
 “have endured the pangs of want and hunger; your
 “children you have sacrificed to the factory lords—in
 “short, you have been miserable and obedient slaves all

“these years. Why? To satisfy the insatiable greed
 “and fill the coffers of your lazy, thieving master! When
 “you ask him now to lessen your burden, he sends his
 “blood-hounds out to shoot you, kill you!

“If you are men, if you are the sons of your grand-
 “sires, who have shed their blood to free you, then you
 “will rise in your might, Hercules, and destroy the hideous
 “monster that seeks to destroy you.

“To arms, we call you, to arms!

“YOUR BROTHERS.”

(5.) RUHE.

This evidence was also found by the officers in their unreasonable search, and is therefore claimed as *unlawful* evidence.

The point of the unlawfulness of this evidence, and of the revenge circular, as hereafter discussed, is that the manner of obtaining it was contrary to the constitution, and using it as evidence against this defendant, and against all of the defendants, was forcing them to give evidence against themselves, which is also contrary to the constitution.

At 54 West Lake street, on Monday night, it was resolved that in certain contingencies, the word “Ruhe” should be published in the Arbeiter Zeitung under the heading “Briefkasten” (Letter-box), as a signal for certain action by the members there present. This we shall consider more particularly in the review of the case made against Adolph Fischer. It was shown also that in the Arbeiter Zeitung of May 4th the word “Ruhe” actually did appear under the heading “Briefkasten.” “Ruhe” is a German word, meaning quiet, rest. (A., 4; J, 59.) Mr. Spies wrote the word “Ruhe” for insertion in the Arbeiter Zeitung on May 4th.

(3.) GILMER'S TESTIMONY.

(A., 141-147; K, 362-412). He went to the Hay-market meeting, reaching there about a quarter to 10 o'clock, *on his way home from the Palmer House, where he says he went expecting to meet Governor Merrill and Judge Cole, of Iowa.* He stood near the lamp-post on the corner of Crane Bros.' alley, between the lamp-post and the wagon and up near the east side of the wagon for a few minutes; Fielden was speaking when he came to the meeting; he stood there for a few minutes looking for a party whom he expected to find there, and then stepped back in the alley between Crane Bros.' building and the building immediately south of it; *standing in the alley and looking around, he noticed parties in conversation directly across the alley, on the south side thereof;* some one on the edge of the sidewalk said: "Here comes the police!" and there was a sort of a rush to see the police come up; *a man thereupon came from the wagon down to the parties on the south side of the alley, lit a match and touched off something, a fuse which commenced to fizzle, and the party who held it took two steps forward and tossed it into the street;* he knew by sight the man who threw "the fizzing thing into the street," but did not know his name; he was a man about five feet ten inches high, somewhat full-chested, with a light sandy beard, full faced, with an eye set somewhat back in the head, and probably weighing 180 pounds; he had on a brown or black hat; the photograph of Schnaubelt, presented to the witness, is the man who threw the bomb out of the alley; *Spies was the man who came from the wagon toward the group; and Fischer was one of the group;* after the bomb was thrown these parties immediately left through the alley; witness stood still until the firing ceased.

Upon *cross-examination* of Mr. Gilmer he said that he made no outcry at that time, he saw the fuse lighted and the bomb thrown and did not for some time afterwards communicate to any person whatever what he had seen and heard upon that night, although he had different conversations about the meeting in which he had stated that he had been there. On the afternoon of the next day at the city hall he did state to a Times reporter and another man, that he believed he could identify the man who threw the bomb if he ever saw him again, but did not at that *time detail the occurrence, as stated in his testimony*; from the position which he occupied in the alley, he could not see the wagon, and therefore *did not see Spies when he came from the wagon*, but that he came from the direction of the wagon, and that he had seen Spies before standing on the sidewalk and talking with somebody; he was inclined to think it was Schwab; he did not run at the time of the shooting, but stood perfectly still, there were no bullets coming in around his locality in the alley; and after it was all over, he backed out of the alley, took a car and went home; there was much excitement and talking about the meeting upon the car and elsewhere, but *he communicated to nobody what he had seen or heard*; his interview as to these occurrences had been mostly with detective James Bonfield, but *he would not be positive that he had ever told Mr. Bonfield that he saw the man light the match* (K, 392); he had seen Spies and knew him by sight for a year and a half, but not by name, had frequently seen and heard him speak at public meetings, but never inquired what his name was, though he had heard him once at a meeting on Market street, a year ago last spring, and had seen from the

paper afterwards that Spies had been one of the speakers at that meeting. Witness was in the city at the time of the proceedings before the different coroner's juries, who investigated the cause of the death of the officers killed at the Haymarket; that the officers then knew his name and address, but that *they never called upon him to go either before the grand jury or the coroner's jury.* * He stated that he detailed his experiences at the Haymarket to Mr. Grinnell on the Sunday after the Haymarket meeting, but that he *only told Mr. Grinnell that he believed he could identify the person who threw the bomb if he saw him; he thought, however, that he told him he saw one man strike the match and light the fuse, and another man throw the bomb; he had received money from time to time in small sums from Bonfield, but he had not told any one except the officers named that he saw the act of lighting the bomb accomplished.* (A, 303; N, 56.)

We will also demonstrate:

- (1.) Spies did not enter Crane Bros.' alley.
- (2.) Fischer was at Zepf's Hall a half a block distant when the bomb exploded.
- (3.) The bomb was not thrown from the alley.
- (4.) The bomb was thrown from fifteen to forty feet from the alley, from behind some boxes on the sidewalk on Desplaines street.
- (5.) *Spies remained on the speaker's wagon*, except to go for Parsons, all the time from the commencement of the meeting until the order to disperse was given; he then dismounted and went to Zepf's Hall.

Exculpatory Evidence.

(1.) GILMER'S EVIDENCE.

(1.) AUGUST SPIES (A, 303; N, 53): When Captain Ward demanded the dispersion of the meeting *Spies was on the wagon, and his brother Henry and Ernest Legner standing beside the wagon reached their hands to help him dismount.* As he reached the sidewalk he heard the explosion; he was then swept along by the people going north and entered Zepf's Hall; *did not go to the alley nor in the direction of the alley.* Also see Spies' testimony, given more fully in the exculpatory evidence of Schwab, *ante*, page.

(2.) HENRY SPIES (A., 241, 242; M, 148, 150): When the police commanded the meeting to disperse, his brother *August was still on the wagon; he (Henry) was standing beside the wagon and told August to get off; he reached out his hand and helped him down.* Just as August dismounted from the wagon, some one jumped behind with a pistol, and in warding off the pistol shot from August, received it in his own person, the ball passing through the testicle in a downward and oblique direction. On the trial the direction of this ball was demonstrated by the production of the clothing worn by Henry, showing where the ball went in and came out, and by the testimony of Dr. Thilo, who attended Henry for the wound. (A., 275.)

(3.) CAPT. BONFIELD swears that when August Spies was first arrested he gave substantially the same account of his movements the night of the meeting as here claimed, and that Legner was with him. (A., 27; J, 349, 350.)

(4.) Ernest Legner was a witness before the grand jury, his name endorsed on the indictment, but was not used as a witness. We claim, therefore, that Legner, when under oath, gave the same account as to Spies being on the wagon when the police came up, his helping Spies dismount at the time of the explosion, and that had Legner testified on the trial, he would have testified to the fact as having occurred in that way, as well as to the fact of his being with Spies and Schnaubelt, on the way from the wagon in search of Parsons, at the beginning of the meeting, and that Schwab was not with them.

(5.) JOSEPH BACH (A., 280, 281; M, 404, 405): He and Mitlacher were standing on a platform by the door of a building south of the alley on Desplaines street, east sidewalk, about six feet from the alley, and from this elevation could look over the heads of people standing on the sidewalk and in the alley, and have a distinct view of the wagon and those about it. When the police came up he looked at them and then at the wagon; *he saw Henry Spies and noticed August Spies attempt to get from the wagon on to the sidewalk.* Witness then turned away, and had taken but one or two steps when the bomb exploded. He noticed August Spies getting off the wagon and Henry, with his arm extended to help him down.

(6.) MAX MITLACHER saw, after the police came up, Fielden and Spies standing on the wagon; *saw Spies jump down from the wagon on the east side; saw Henry reach up and help him down.*

(7.) SLEEPER T. INGRAM, a workingman in the employ of Crane Bros., who lives with his parents (A., 286, 287), was on the steps of Crane Bros.' establishment immediately east of the wagon, but a few feet from it, when

the police came up. Fielden and Spies were on the wagon at that time. (M, 449.) *As Fielden made the remark they were peaceable, Spies turned around and started to go off the wagon. He reached his left hand down to be assisted, stooped and jumped, and had no more than got to the sidewalk when the bomb exploded.*

(8.) CONRAD MESSER (A., 208): He saw both Fielden and Spies on the wagon, when the police came up and the command to disperse was given (L, 400). Spies left the wagon two or three seconds before Fielden did; saw *Spies on the wagon when the command for dispersing was given.* (L, 400.)

(9.) AUGUST KRUMM (L, 414, 416): He was in the alley near the mouth of it, with his friend Albright, near the building to the south, when the police came up; a short time before the police came up, he had struck a match and lighted his pipe, and held it while Albright lighted his pipe. *No other match was lighted, nor any fuse lighted, in the alley at that time; he did not see Spies come into the alley that night.*

(10.) WILLIAM ALBRIGHT (A., 217, 218) same as Krumm.

(11.) WILLIAM MURPHY (A., 255): He got up on the speaker's wagon to look for a friend whom he supposed to be in the crowd, and remained on the wagon till he heard the word disperse.

There were about six persons on the wagon and *no one got down.*

(12.) ADOLPH TENNES (A., 259; M, 269): At the time the officers came to the meeting he stood about four or five feet south of the wagon; as soon as he heard the

order to disperse given, he ran. *At the time he started, Spies was still on the wagon.*

(13.) MR. FIELDEN: He testifies that Spies was on the wagon when Ward was talking with him (A., 268; M, 318).

Gilmer testified for the State that when Spies came into the alley he saw him COME DOWN *from the wagon*. (A., 141; K, 363.) On cross-examination he said that at the time Spies came into the alley, the place where Gilmer was standing was twelve or fourteen feet from the mouth of the alley into the alley, and it was physically impossible for him to have seen the wagon from that point. Being thus cornered, he said Spies did not get down from the wagon, but came from towards the wagon, where he had seen him standing on the sidewalk before he, Gilmer, came into the alley. (A., 144; K, 378, 380.)

(14.) OTTO WANDREY (A., 247, 248; Vol. M, 190, 196): That he was at the Haymarket meeting with Fischer on the night of the 4th, between 9 and 10 o'clock. After listening to the speaking for about a half an hour they went to Zepf's saloon, where they had a glass of beer, sitting at a table close behind and a little north of the stove. At the time of the explosion of the bomb, *Fischer was with Wandrey at Zepf's Hall; when he and Fischer entered Zepf's saloon, he looked at the clock and it was a little after 10.*

(15.) LIEUT. SHAY, a witness for the State (A., 60; J, 72), admitted he had a conversation with Fischer while the latter was under arrest at police headquarters, in which Fischer stated to him that on the evening of the 4th of May, *he was at Zepf's Hall at the time of the*

explosion of the bomb in company with Wandrey. Directly thereafter, Wandrey was sent for by Shay and stated that Fischer was in Zepf's Hall with him at the time of the explosion.

(16.) MRS. LIZZIE A. HOLMES (A., 262; M, 287, 288): Went with Mrs. Parsons, Mr. Parsons and Mr. Brown from the Haymarket to Zepf's Hall shortly before the explosion of the bomb, and was there with those parties when the bomb exploded. *After entering the hall, she saw Fischer sitting at the table further north, and saw him there from time to time up to the explosion of the bomb, and does not think he left the building in the interval at all.*

(17.) THOMAS BROWN (A., 238, 239; M., 124, 125) went to Zepf's Hall on the night of the Haymarket meeting, while Fielden was speaking, in company with Mr. and Mrs. Holmes. *When I had entered the saloon, saw Fischer there. This was just before the bomb was exploded. Did not see Fischer go out.*

(18.) ALBERT PARSONS (A., 314, 315; N, 115), about ten minutes after the adjournment of the Haymarket meeting, went in company with Mr. Brown, Mrs. Parsons and Mrs. Holmes to Zepf's saloon. *After entering, he noticed Fischer sitting at one of the tables, spoke to him; sat himself at the same table a few moments, then went around where the ladies were, and almost instantly thereafter was the flash of the explosion of the bomb followed by the roar of the explosion, and almost simultaneously heard the volley of revolvers.* By Gilmer's testimony, Fischer was with Spies in the alley, when in fact he was in Zepf's saloon.

As a result of this whole matter, we have Gilmer's

testimony wholly uncorroborated on the one side, and on the other, seventeen witnesses, who swear to facts, the most of which are absolutely incompatible with the truth of Gilmer's statement.

I.

THE BOMB WAS NOT THROWN FROM THE ALLEY.

(1.) OFFICER LOUIS HAAS, witness for the state (A., 128; K, 252, 253) attended the meeting in citizen's clothes and at the time of throwing the bomb was standing in the center of the street and within five or six feet of the wagon. He says the *bomb came from about five or six feet south of the corner of the alley.*

(2.) PAUL C. HULL, reporter of the Daily News, witness for the state (A., 116) was standing at the time of explosion upon a landing at the head of the stairway on the brick building on the north-east corner of Randolph and Desplaines. Directly opposite to where he stood was a pile of boxes, south of the lamp-post on the east side of Desplaines. He saw the bomb in process through the air, and it seemed to come from *about fifteen to twenty feet south of Crane's alley*, flying over the heads of the police (K, 124.)

(3.) HEINEMANN, reporter for the Tribune and witness for the state (A., 126; K, 325) was at the time of the explosion on the east of the sidewalk of Desplaines, half way between Crane Brothers' alley and Randolph, saw the bomb rise out of the crowd, that it rose from near the south-east corner of the alley.

On behalf of the defendants:

(4.) BARTON SIMONSON (A., 178, 179; L, 171) says at the time police came he stood upon stairway of the building north-east of the corner of Randolph and Desplaines, about half way up the stairs, which brought his head probably twenty feet from the ground and gave him a clear view over the heads of the audience. Bomb came from a point *nearly twenty feet south of the south line of Crane's alley*, from the center of the sidewalk on the east side of the street and from behind some boxes.

(5.) LUDWIG ZELLER (A., 184; L, 149, 150) stood near lamp-post on the alley; after the order to disperse was given turned to walk south to Randolph. As he turned, saw a lighted fuse go through the air from six, eight or ten feet south of the lamp. Explosion immediately after. On cross-examination (A., 185; L, 159), was standing at the moment bomb was thrown, *five or six feet south of the alley* and saw a lighted fuse eight or ten feet south of him.

(6.) FREDERICK LIEBEL (A., 188, 189; L, 201, 203) was standing near lamp-post when police came up. As the order to disperse was given, turned to go south to get out of the crowd. As he proceeded south, he saw a lighted fuse which at the time he took to be a stump of a cigar thrown from sidewalk near *midway between the alley and Randolph street*. Bomb immediately exploded.

(7.) DR. JAMES D. TAYLOR (A., 191, 192; L, 230) stood over the curb-stone at intersection of street and alley on north side of Crane's alley. Saw the bomb in the air somewhere *between twenty and forty feet south of the alley*, and the man who threw it stood beyond a

number of boxes which stood south of the lamp-post. He revisited the scene the next morning and saw the boxes still there.

(8.) WILLIAM URBAN (A, 201, 344) saw something like a fire-cracker in the air, followed by an explosion and then pistol shooting. What looked to him like a fire-cracker came from *fifteen to eighteen feet south of the lamp-post at Crane's alley.*

(9.) AUGUST KRUMM (A., 210; L, 415) stood near the mouth of the alley next the building on the south. The bomb must have started about *twenty feet south of the alley*; was about twelve feet in the air when I saw it. *It could not have started at the alley, and did not.* Saw a streak of fire right after and heard the explosion of the bomb.

(10.) WILLIAM ALBRIGHT (page 217; L, 493) was with Krumm. Bomb *was not lighted or thrown from the alley where they stood.*

(11.) JOSEPH BACH and Max Mitlacher *did not see any object thrown from the alley into the street.* (A., 281; M, 407, 408; A., 285; M, 433.)

(12.) JOHN HOLLOWAY (A., 230, 231) stood against lamp-post at Crane's alley (M, 58). He was looking at the speaker's wagon at the time of the dispersion and until explosion of bomb (M, 59, 60). Says *he is sure nothing came out of the alley while he stood there.* (M, 63). From his position, if the bomb had been thrown from the alley it could not have escaped his attention.

(13.) GEORGE KOEHLER stood on the north-west corner of Randolph and Desplaines; saw the bomb come *from the east side of the street and from opposite where*

he stood from the middle of the sidewalk and flying in a north-westerly direction.

(14.) EDWARD LEHNERT stood on the west side of Desplaines street, thirty paces from Randolph, twenty paces south from opposite the wagon. Saw a streak of fire that looked like a stump of cigar in the air. *It came from twenty paces south of the alley.*

(15.) JOHN BERNETT (A., 292; M, 493): At the Hay-market meeting at the time of the explosion. *Stood about thirty-eight feet south of Crane's alley.* On the Wednesday preceding his testimony made a careful examination of the ground to find out the locality where he stood. He saw the man who threw the bomb. Saw the bomb go through the air, direction west and a little north. The man who threw the bomb *was right in front of Bennett at the time*, was about Bennett's size, having moustache with no chin beard. *Being shown Schnaubelt's photograph, says that is not the man. The bomb was thrown from about fifteen feet south of the alley.* There was a pile of boxes south of the lamp-post which was on the corner of the alley. When the bomb was thrown he saw the motion of throwing; saw the fire right from the hand, followed the light with his eye, saw the light when the bomb exploded, heard the explosion, saw a flash and then ran away. (A., 294.)

On cross-examination he states that he had told Capt. Schaack and Grinnell he could not tell how the man did look. He told Mr. Furthman that the bomb was thrown *about fifteen steps south of the alley.*

On re-direct he said the man who threw the bomb was but little larger than himself, and had a mustache, but *no chin whiskers.*

Against this array is Gilmer's testimony unsupported by any witness in the record. As contradictory thereof we have Hull and Heinemann for the state, and twelve witnesses for the defense. Gilmer is therefore contradicted by fifteen witnesses.

II.

GILMER WAS IMPEACHED BY

- (1.) Lucius M. Moses (A., 194, 195; L, 268-273).
- (2.) Mrs. B. P. Lee (A., 195, 196; L, 279).
- (3.) John G. Brixey (A., 199).
- (4.) John Garrick (A., 200).
- (5.) Mary Grubb (A., 227).
- (6.) Phineas H. Adams (A., 250).
- (7.) Edward H. Castle (A., 258).
- (8.) H. S. Howe (A., 259).
- (9.) John W. Gage (A., 292).

He was sustained, first, by Judge Cole and Governor Merrill, of Iowa, *who testified they were not in Chicago at the evening of the 4th at the Palmer House or elsewhere, and were not expecting to be in Chicago at that time. Had no appointment to meet Gilmer, never communicated with Gilmer, never had any correspondence with him, nor made such appointment with him.* Thus Gilmer began his testimony with a falsehood. The Iowa witnesses lived in a different circle of life from Gilmer. The Chicago witnesses also lived in different circles of life from Gilmer, and knew him but slightly. Most of these witnesses did not know where Gilmer lived or what his neighbors thought of him. The witnesses for the defense moved in the same circle Gilmer did, and knew him well.

III.

GILMER MADE CONTRADICTORY STATEMENTS.

(1.) W. A. S. GRAHAM, reporter for the Chicago Times (Abst., 321, 322; Vol. M, 144, 149); also, (A., 143; K, 370), says Gilmer told him, on the 5th day of May, at the central station, that he believed he could identify the man who threw the bomb if he ever saw him again.

Graham further testifies: I asked what kind of a looking man he was, and Gilmer said, he was a man of medium height, and, I think, had whiskers; he wore a soft black felt hat, but his back was turned towards me. He said nothing about anybody else in that connection. This conversation was about 4 o'clock on May 5th. He said nothing about there being more than one man at that location, and *nothing of a knot of men*, or anything of that kind. *He said one man lighted the fuse and threw the bomb.* The conduct of the witness, Gilmer, in keeping this information to himself, who, the next day, gave statements different from his statement on the stand, are matters to which we call attention of the court.

The question for this court, in conclusion, is: is the testimony of Gilmer for the State, who received unknown sums of money from the State, who made no outcry upon seeing this startling and wicked act, who communicated the fact to no one, who told the story at first leaving out the vital fact, who in such testimony is contradicted by three witnesses for the State, and on all points by thirty-two witnesses for the defense, who began his testimony with a lie about having an engagement to meet Judge Cole and Gov-

ernor Merrill, of Iowa, that night, at the Palmer House, and who is successfully impeached by nine witnesses who knew him well and lived in the same social circle with him, is such testimony, we repeat, sufficiently reliable to hang anybody on?

(2.) THE MCCORMICK MEETING AND REVENGE CIRCULAR.

On the afternoon of May 3d, Mr. Spies attended the so-called McCormick meeting. The testimony introduced by the state as to that meeting is as follows: On the afternoon of that day a meeting of the Lumber Shovers' Union was held in the vicinity of McCormick's factory, whose object was to receive the report of a committee that had been sent to the bosses of the lumber yards to get the eight-hour concession. There were from five to six thousand men in the crowd. The meeting was addressed from the top of a freight car first by one Fehling, afterwards by Spies, the plaintiff in error. Haraster, the president of the Bohemian section of the Lumber Shovers' Union, tried to prevent the speakers from speaking, and told the people not to listen to them. (A., 34, 35.) Spies addressed the crowd in German for about ten or fifteen minutes; he was rather excited, and very earnest; the crowd patiently listened to him until the bell of McCormick's factory rung (A., 33; I, 402), when all of a sudden somebody on the opposite end of the car from which Spies was speaking (A., 33; I, 398, 402) shouted, "Now, boys, let us go for them 'damn scabs.'" At that moment a portion of the crowd which was near McCormick's factory commenced to move towards McCormick's. (A., 33; I, 403.) Spies did not go with the crowd. (A., 32; I, 395, 396.)

The crowd pitched into McCormick's men going home from work, threw bricks, stones and sticks into them and into the windows of the factory. Officer West (A., 31), who was stationed at the factory, was himself attacked; he turned in the alarm for the police, who arrived within a few minutes and scattered the crowd (A., 32; I, 392), firing into them, and using their clubs. Officer Enright (A., 35) claims that he heard shots from the crowd, but he cannot say whether the police had fired before he heard those shots. However, none of the police were shot, though some of them were hit with stones. (A., 35; I, 420.) Immediately after the patrol wagon, containing eleven policemen, had arrived (A., 35; I, 416), a couple of hundred other policemen came upon the ground (A., 36; I, 421); at that time, however, the firing was over. The crowd scattered as soon as they saw the additional force approaching. (A., 36; I, 422.) Officer Shane testified (A., 36) that he was detailed to look up the injured citizens, and admits that he found, as a result of the police firing, one who died, and two or three others who were injured. As to the contents of Spies' speech, the *only* testimony offered by the state is that of Mr. Baker, who says (A., 33; I, 402) he heard him speak *of wives and children and homes, and appealing for their protection.*

In connection with the foregoing testimony the state was permitted to introduce in evidence an account of the McCormick meeting, written by Spies and published in the Arbeiter Zeitung the following day. (People's Exhibit 63; 1 A., 179).

The testimony introduced in behalf of the plaintiff in error, Spies, as to the McCormick meeting, so called, was in brief as follows: That on Sunday morning, May 2d,

at a meeting of the Central Labor Union, which is a body composed of delegates from about twenty-five or thirty different labor unions in Chicago (A., 185; L, 156), the delegates of the Lumber Shovers' Union, then on a strike for the shortening of the hours of labor, suggested that a meeting of the lumber shovers had been called for Monday afternoon at the Black road, and requested that a good speaker, who could keep the meeting quiet and orderly, be sent to that meeting. In the afternoon, at another meeting of the Central Labor Union, which Mr. Spies attended in the capacity of a reporter, Mr. Zeller, of the agitation committee of the Central Labor Union, requested Mr. Spies to go out the next day and address the lumber shovers' meeting. All this is uncontradicted and appears from the testimony of Zeller (A., 184, 185; L, 155, 156), Urban (A., 201; L, 340-342), Witt (A., 251), and Spies (A., 297; N, 20).

On the following day, Monday, May 3, Spies went out to the appointed place of meeting, and found there gathered a crowd of over six thousand men. Other speakers were present, some of whom preceded him upon the platform. He was introduced by Mr. Breest, secretary of the Lumber Shovers' Union. Objection to his speaking was made by some persons present, on the ground that he was a socialist, but Breest stated that Spies had been invited to address the audience and was sent by the Central Labor Union. Mr. Spies then proceeded to speak. (A., 297; A., 253.) The substance of his speech was to the effect that he advised the workingmen to stand together and to enforce their demands at all hazards, otherwise the bosses would, one by one, defeat them. Nothing was said by him of an

incendiary nature; no suggestion of violence was made, not one word was said in regard to the use of force or arms. (A., 297; N, 23.) Besides the testimony of Spies, this appears from the testimony of Witt (A., 252; M, 220), Breest (A., 253; M, 229), Schlavin (A., 254; M, 233), Pfeiffer (A., 254; M, 236).

Spies swears that he had no idea, when he was invited, of any relationship of McCormick's employes to that meeting, or that the locality of the proposed meeting was in the proximity of the McCormick works. (A., 297; N, 21.) Besides, it is shown, without contradiction, that the lumber shovers whom Spies was addressing had *absolutely no connection with the factory or employes of McCormick*. (A., 252; M, 221; A., 255, M, 237.)

While Spies was speaking and when McCormick's bell rang, a part of the crowd on the outskirts, some 500 people, detached themselves and ran towards where the men were coming out of McCormick's works, distant some three or four blocks from the meeting. Spies beckoned to the crowd to remain, saying, in the course of his remarks, that they had nothing to do with McCormick's. He went on with his speech to a conclusion, speaking some five or ten minutes after the interruption, and was thereupon elected by the Lumber Shovers' Union as a member of a committee appointed to wait upon the lumber bosses. (A., 252; M, 223; A., 298; N, 24.)

Meantime the sound of shots was heard at the meeting, and at the same time the police drove up in a patrol wagon towards McCormick's, followed immediately by a large number of police on foot. Then only, Mr. Spies, who to his duties as editor of the Arbeiter Zeitung added those of a reporter for the same paper, went up to McCormick's, and, coming

into the neighborhood of the meeting, discovered that the police were chasing people who were unarmed and fleeing in every direction, pursuing them behind cars and in various localities, and firing upon them indiscriminately.

At that moment he was advised by one whom he met coming from the direction of McCormick's, a stranger to him, that *two men had been carried away dead*, and at least twenty-five had been shot, adding words of contempt for the union men, assembled there who would let those men be shot down like dogs.

Mr. Spies admits that his blood was boiling over what he heard and witnessed, and that he thereupon went back to the meeting that he had been addressing, and made an appeal to them that they should proceed to the relief of the parties who were under the fire of the police, near the McCormick works, but they were unconcerned and went home. Seeing that nothing could be done, Spies returned to the Arbeiter Zeitung office, and under the excitement of the hour, and what he had seen and heard, wrote the Revenge circular.

There were printed about twenty-five hundred of those circulars (A., 84; J, 280), but not more than half of them were actually distributed (A., 298; N, 27).

In regard to his motives in publishing this circular, Mr. Spies gives the following explanation (A., 311; N, 99 *et seq.*): "When I wrote it, I thought it was proper; I "don't think so now. I wrote it to arouse the working "people, who are stupid and ignorant, to a consciousness "of the condition that they were in, not to submit "to such brutal treatment as that by which they "had been shot down at McCormick's. I wanted "them not to attend meetings under such circumstances "unless they could resist. I didn't want them to do any-

“ thing in particular; I didn’t want them to do anything.
 “ That I called them to arms is a phrase, probably an
 “ extravagance. I did intend that they should arm them-
 “ selves. I have called upon the workingmen for years
 “ and years, and others have done the same thing before
 “ me, to arm themselves; they have a right under the
 “ constitution to arm themselves, and it would be well for
 “ them if they were all armed. I called on them to arm
 “ themselves, not for the purpose of resisting the lawfully
 “ constituted authorities of the city and county, in case
 “ they should meet with opposition from them, but for
 “ the purpose of resisting the unlawful attacks of the
 “ police, or the unconstitutional or unlawful demands of
 “ any organization, whether police, militia or any other.”

There is other evidence tending to show that this circular was printed at the Arbeiter Zietung office, Spies detaining some workman after six o’clock for that purpose.

This circular was read at the meeting at Grief’s Hall on the night of the 3d of May, but without the knowledge of Spies, who was not there. It was addressed to the community, and not a class. (A., 27; O, 348, 349.)

On the morning of the Haymarket meeting Spies, who by this time had gotten his head back upon his shoulders and was cooled off, was asked by Fischer to address that meeting in the evening at the Haymarket (A., 229; N, 29 and 30), shortly afterwards he saw the following advertisement:

“ Attention, Workingmen! Great mass-meeting to-
 “ night, at 7:30 o’clock, at the Haymarket, Randolph St.,
 “ bet. Desplaines and Halsted. Good speakers will be
 “ present to denounce the latest atrocious act of the police,
 “ the shooting of our fellow-workmen yesterday afternoon.
 “ *Workingmen, arm yourselves, and appear in full force!*

“ THE EXECUTIVE COMMITTEE.”

Spies said the expression, “ *Workingmen, arm yourselves, and appear in full force,*” must be struck out or he would not attend the meeting or speak there (A., 299; N, 31, 32); Fischer acquiesced and sent to Wehrer & Klein, printers, and had the line taken out; thereafter 20,000 circulars were printed with the line omitted. (A., 299; N, 32. A., 257; M, 251, 253. A., 138; K, 319, 320.)

(3.) RUHE.

There is no evidence showing or tending to show that Mr. Spies at the time knew of any special import attached to that word. In fact, there was no evidence introduced by the state as to how Mr. Spies came to write that word for publication. Mr. Spies himself gives the following account, which is entirely uncontradicted (A., 306; N, 63 *et seq.*): “It happened just the same as with any
“ other announcement that would come in. I received a
“ batch of announcements from a number of labor or-
“ ganizations and societies a little after 11 o’clock in my
“ editorial room, and went over them. Among them was
“ one which read, ‘ Mr. Editor, please insert in the letter-
“ box the word “Ruhe” in prominent letters.’ This was
“ in German. There is an announcement column of
“ meetings in the Arbeiter Zeitung, and a single word, or
“ something like that, would be lost sight of in the an-
“ nouncements. In such cases, people generally ask to
“ have that inserted under the heading of letter-box.
“ Upon reading that request, I just took a piece of paper
“ and marked on it ‘ Brief-kasten ’ and the word ‘ Ruhe.’
“ The manuscript which is in evidence is in my hand-
“ writing. At the time I wrote that word, and sent it up to
“ be put in the paper, I did not know of any import what-
“ ever attached to it.”

This explanation finds corroboration in the testimony of Fricke, a witness for the prosecution, and formerly book-keeper for the *Arbeiter Zeitung*, who says (A., 43; I, 487, *et seq.*): "About the 1st of May there was sometimes "almost a whole column in the *Arbeiter Zeitung* occupied "by notices of meetings of workingmen at different "places and halls. They would bring such notices to the "*Arbeiter Zeitung* and say to Mr. Spies, 'put so and so "under the column of meetings.' It was a common thing "for postal cards to be received at the office of the *Ar-* "*beiter Zeitung*, and that Spies or Schwab would take it "and read it over, and then revise it or alter it, and send "it up for publication in the letter-box, or in this column "where notices were published."

Mr. Spies further says in regard to the same subject (A., 306, 165): "My attention was next called to the "word *Ruhe*, a little after 3 o'clock in the afternoon. "Balthazar Rau, an advertising agent of the *Arbeiter* "Zeitung, came and asked me if the word *Ruhe* was "in the *Arbeiter Zeitung*. I had myself forgotten about "it, and took a copy of the paper and found it there. "He asked me if I knew what it meant and I said I did "not. He said there was a rumor that the armed sections "had held a meeting the night before and had resolved to "put in that word as a signal for the armed sections to keep "themselves in readiness, in case the police should precipi- "tate a riot, to go to the assistance of the attacked. I sent "for Fischer, who had invited me to speak at the meeting "that evening, and asked him if that word had any refer- "ence to that meeting. He said none whatever, that it was "merely a signal for the boys, for those who were armed "to keep their powder dry in case they might be called "upon to fight within the next days. I told Rau it was a

“very silly thing, or at least there was not much rational sense in that, and asked him if he knew how it could be managed that this nonsense would be stopped, how it could be undone, and Rau said he knew some persons who had something to say in the armed organizations, and I told him *to go and tell them that the word was put in by mistake*. Rau went, pursuant to the suggestion, and returned to me at 5 o’clock. I was not a member of any armed section; I have not been for six years.”

That the signal, *Ruhe*, had no relation whatever to the Haymarket meeting will appear conclusively when we come to consider the Monday night meeting. That Mr. Spies had no knowledge of its meaning at the time he wrote it for insertion in the *Arbeiter Zeitung*, there is no reason to doubt; that he did not consent to any action to be taken pursuant to such signal, and that, in fact, he did all he could to prevent its being acted upon by those who knew its meaning, appears from his own testimony, which is not contradicted.

Exculpatory as to All who were Present.

THE CHARACTER OF THE HAYMARKET MEETING IF LEFT ALONE.

Mayor HARRISON tells us (A., 174; L, 27 *et seq.*) that, having had a conversation with Inspector John Bonfield, and arranged for the presence of the police at the Desplaines street station, to be held in readiness against possible violence, he concluded to attend the meeting in person, so as to personally order its dispersion if, in his judgment, it assumed a dangerous tendency. It was his own determination to do this, against the will of the police.

He attended the meeting from its beginning until near the close of Parsons' address. Here is his testimony (A., 175; L, 36 *et seq.*):

"I did, in fact, take no action at the meeting about dis-
 "persing it. There were occasional replies from the
 "audience, as 'Shoot him,' 'Hang him,' or the like, but I
 "don't think, from the direction in which they came,
 "here and there and around, that there were more than
 "two or three hundred actual sympathizers with the
 "speakers. Several times cries of 'Hang him' would
 "come from a boy in the outskirts, and the crowd would
 "laugh. I felt that the majority of the crowd were idle
 "spectators, and the replies nearly as much what might
 "be called 'guying' as absolute applause. Some of the
 "replies were evidently bitter; they came from immedi-
 "ately around the stand. The audience numbered from
 "eight hundred to one thousand. The people in attend-
 "ance, so far as I could see during the half hour before
 "the speaking commenced, were apparently laborers or
 "mechanics, and the majority of them not English speak-
 "ing people, mostly Germans. There was no suggestion
 "made by either of the speakers looking toward calling
 "for the immediate use of force or violence towards any
 "person that night; if there had been I should have dis-
 "persed them at once. After I came back from the sta-
 "tion Parsons was still speaking, but evidently approach-
 "ing a close. It was becoming cloudy and looked like
 "threatening rain, and I thought the thing was about over.
 "There was not one-fourth of the crowd that had been
 "there during the evening, listening to the speakers at
 "that time. In the crowd I heard a great many Germans
 "use expressions of their being dissatisfied with bringing
 "them there for this speaking. When I went to the sta-

“ tion, during Parsons’ speech, I stated to Capt. Bonfield
 “ that I thought the speeches were about over; *that nothing*
 “ *had occurred yet, or looked likely to occur, to require*
 “ *interference*, and that he had better issue orders to his
 “ reserves at the other stations to go home. Bonfield re-
 “ plied that he *had reached the same conclusion from re-*
 “ *ports brought to him*, but he thought it would be best to
 “ retain the men in the station until the meeting broke up,
 “ and then referred to a rumor that he had heard that
 “ night, which he thought would make it necessary for
 “ him to keep his men there, which I concurred in. Dur-
 “ ing my attendance of the meeting I saw no weapons at
 “ all upon any person.”

Upon cross-examination he says (Abst., 170):

The rumor referred to was related to him by Capt. Bonfield immediately after his reaching the station. Bonfield told him that he had just received information that the Haymarket meeting, or a part of it, would go over to the Milwaukee and St. Paul freight house, then filled with scabs, and blow it up. There was also an apprehension of fear on Mayor Harrison’s part that this meeting might be held merely to attract the attention of the police to the Haymarket, while the real attack, if any, should be made that night on McCormick’s. Those were the contingencies in regard to which he was listening to those speeches. In listening to these speeches, he concluded it was not an organization to destroy property that night, and went home.

Mr. ENGLISH, the Tribune reporter, says (Abst., 133; K, 284): “It was a peaceable and quiet meeting for
 “an outdoor meeting. I didn’t see any turbulence. I
 “was there all the time.”

That the crowd fired upon the police is denied by the

following witnesses: Simondson (A., 179, L. 73); Zeller (A., 185, L. 157); Richter (A., 189, L. 187); Liebel (A., 189, L. 202, 203); Taylor (A., 192, L. 233); Stenner (A., 196, L. 283); Gusscher (A., 197, L. 301, 302); Raab (A., 198, L. 315, 316); Urban (A., 202, L. 349); Hiersemenzel (A., 207, L. 387); Messer (A., 208, L. 401); Lindinger (A., 216, L. 475); Koehler (A., 219, L. 514, 515); Heidekrueger (A., 222, L. 545, 546); Snyder (A., 237, M. 112); Waldo (A., 245, M. 170); Ingram (A., 287, 288, M. 451).

We beg leave here to call attention to the acknowledged rules of criminative evidence as to all the proof which precedes this, and in reference to all of the defendants: (1.) All the facts which are accepted as the basis of the legal inference of guilt must be clearly and satisfactorily proven. The jury should not entertain reasonable doubts of the truth of such criminative facts. (2.) Where the conclusion of guilt rests upon several facts, the jury must find that each fact, which it accepts as essential to the conclusion of guilt, is established beyond a reasonable doubt, the same as though the whole conclusion rested on that fact. If the fact is not so proven, it should be rejected from consideration altogether. Tested by these rules, the only facts we have thus far seen satisfactorily proven, and by lawful evidence and beyond a reasonable doubt, are that there was a meeting at the Haymarket, which was extremely peaceable, and that some of the defendants were there. The subjects before this meeting were discussed as a whole in not an intemperate manner. A storm cloud arose and a majority of the meeting, which was small, disintegrated to Zepf's Hall. In this condition the police appeared and ordered its dispersion. Immediately upon this order the bomb was thrown by an unknown person. The aiding

of this person in the throwing of that bomb is the *very gravamen* of this offense. It is the *corpus delicti* as to these defendants, and in reference to such *corpus delicti* the case stands before your Honors naked and bare of any evidence whatsoever.

VI.

FISCHER AND ENGEL.

Inculpatory Evidence.

I.

THE MEETING AT 54 WEST LAKE STREET ON THE NIGHT OF THE 3D OF MAY, 1886.

Gottfried Waller, Bernhard Schrade, Gustav Lehmann and Greif, the proprietor of the hall, were witnesses for the state as to what occurred at that meeting.

GOTTFRIED WALLER says (A., 4; I, 152): He went to the meeting pursuant to the following advertisement published in the Fackel, the Sunday edition of the Arbeiter Zeitung, of May 2, 1882: "Why—come Monday night," which meant a call for the sections of different trades unions to meet at Greif's Hall, 54 West Lake. He arrived at 8 P. M., and the hall was full of workingmen. The meeting advertised was therefore held in the basement. Waller called the meeting to order at half-past 8, seventy or eighty being present. Schrade, Lehmann and Greif say not more than thirty or forty were present. They talked about six men killed at McCormick's. There were present circulars headed "Revenge." Engel stated a

resolution had been passed at a prior meeting, north-west side, and it was resolved that in case of a the word "Ruhe" should be published under the head "Briefkasten" in the Arbeiter Zeitung; it should be a signal for the different trades unions to meet. The north-west side group had determined on Wicker Park as a place for meeting. A committee should observe movements in the city, and if a conflict should occur committee should report to said trades unions, who should storm police stations by throwing a bomb and shoot down anything that came in their way. Police station on North avenue was referred to. Witness then suggested workingmen's meeting to be called Tuesday morning on Market square. Fischer said that would be a mouse-trap and the meeting should be held in the Haymarket in the evening; it was then resolved the meeting should be held at 8 p. m. at Haymarket. The purpose of the meeting was to cheer up workingmen so that they should be prepared in case conflict should happen.

Fischer went away to order handbills, but came back saying the printing establishment was closed. It was said armed men should not participate in the Haymarket meeting. What was said, if anything, as to what should be done in case the police should attempt to disperse the Haymarket meeting? Answer. There was nothing said about the Haymarket; there was nothing expected that the police should get to the Haymarket. There were present representatives from west, north and south side groups. A committee composed of from one or two of each group was to be sent to the Haymarket. This committee was to observe not only the movement at the Haymarket, but in different parts of the city. He only knew one member of the proposed committee—Kraemer. If a conflict hap-

pened in daytime the committee was to publish the word "RUHE." If it happened at night they were to report to members personally at their homes. He did not understand on the 4th of May why the word "Ruhe" was published; it was to be inserted only in the event that a revolution had broken out. Fischer first mentioned the word "Ruhe." Schnaubelt was present at the Lake street meeting, and said the resolution adopted should be communicated to members of the organization in other localities, so that movements should commence in other places also. The plan of operations introduced at 54 Lake street, by Engel, was a plan which Engel had proposed at a meeting of the north-west side group on Sunday morning, May 2d, at the meeting on Emma street, at which meeting both Fischer and Engel were present. On cross-examination he said, at the meeting at Emma street and Greif's hall Mr. Engel stated that the plan was to be followed only in the event of a POLICE ATTACK, AND THAT THE WORKINGMEN SHOULD ONLY DEFEND THEMSELVES IF THUS ATTACKED BY THE POLICE. He repeated positively that nothing was said as to any action at the Haymarket; they were not to do anything at the Haymarket meeting. The plan was they were not to be present there at all; they did not think the police would come to the Haymarket.

No preparations were made for meeting any police attack there, on the night of May 4th; witness was with Fischer walking about the streets, in the neighborhood of Haymarket, and then went to a meeting of the furniture workers, at Zepf's Hall, and was there when bomb exploded. Fischer and himself walked together to Desplaines station; police were mounting patrol wagons, and witness said: I suppose they are getting ready to drive

out to McCormick's, so that they might be there early in the morning. Fischer assented; witness stated the principal purpose of the Haymarket meeting was to protest against action of police at the riot at McCormick's factory. While he was with Fischer at Haymarket nothing was said about preparations to meet an attack by the police. Witness admitted having received sums of money from Captain Schaack.

BERNARD SCHRADE (A., 9 to 12) reached the meeting at 54 Lake street, in the basement, after 9 o'clock. Waller was presiding, and explained what had been spoken prior to his coming. Waller said so many men had been shot at McCormick's by the police, that a mass-meeting was to be held at Haymarket, and they should be prepared in case police should attack them. Circulars headed "Revenge," were distributed; he was present at Emma street meeting Sunday previous. It was suggested there might be trouble after May 1st, in which event they were to help one another. The north-west side group should meet at Wicker Park in the event of a police attack, and defend themselves as well as they could; nothing was said about dynamite, or the word "stuff." It was suggested, in case of an outbreak, to cripple effectiveness of firemen, by cutting the hose; he heard nothing about the word "Ruhe;" nothing was said at any of the meetings about dynamite or bombs, and nothing was said about a meeting at any particular time to throw bombs. It was not agreed to throw bombs at the Haymarket meeting. He was at the meeting; he did not anticipate any trouble there, and left Haymarket on account of the approaching storm.

THOMAS GREIF, proprietor of the hall: On Monday evening, May 3d, a man rented the basement for a meet-

ing; told Greif if "Y" folks come tell them to come downstairs; twenty-five or thirty men present.

Gustav Lehmann's evidence (A., 73), does not reveal anything material.

We claim:

(1.) The evidence of this conspiracy implicates but two of the defendants, to wit: Fischer and Engel.

(2.) The conspiracy formed at 54 Lake street was not for the throwing of a bomb or for the performance of any other unlawful act at the Haymarket meeting, and therefore, was not a conspiracy to commit the act charged in this indictment. Neither was it shown that the bomb was thrown by a member of that conspiracy.

A conspiracy to sustain a civil action for damages must be declared on in the declaration. The same conspiracy, and no other, must be proved upon the trial. Just as a promissory note must be declared on in the declaration and the same note described and not another must be offered in evidence. This principle is held even with more strictness in criminal procedure. The constitution of 1870 (Sec. 8, Bill of Rights), provides that no person shall be held to answer for a criminal offense unless on an indictment of a grand jury, * * * and Sec. 9 provides that: "In all criminal prosecutions the accused shall "have the right" * * "to demand the nature or "cause of the accusation." What constitutes an indictment as to definiteness and legal precision is left to the requirements of the common law and the decision of the courts, and the substance of these are that even greater precision and definiteness is required than in civil cases, and the right of amendment or change of these charges does not exist.

(3.) This testimony was objected to on behalf of the

six defendants not present at said meeting. (B., .) This testimony was also objected to, because not relative to the issue tried. This conspiracy was foreign to the issue. The charge was the throwing of a bomb at the Haymarket, and aiding and abetting that thrower; this agreement was as foreign to that as is a charge of larceny and proof of an agreement to commit forgery. The motion was overruled, and an exception. (A., 41, 57.)

(4.) This testimony being received, a motion was made on behalf of the six not present to exclude it, but this was refused, the court not even limiting it to the two persons who were present. (A., 81, 106.)

Exculpatory Evidence as to Engel.

There is no pretense that Engel was present at the Haymarket meeting, although there is evidence that he was in that vicinity during the first part of it.

WALLER testifies (A., 6, 173) that after the bomb was exploded and after he left Zepf's Hall he went to Engel's home where he found him, with some friends, drinking beer. Waller told what had occurred at the Haymarket. Waller then suggested the people there should go home. Engel assented to this; all went home and nothing else happened.

(2.) AUGUST KRUGER (A. 243): He remained at Haymarket until about 10 o'clock and then went to Engel's house, reaching it a quarter-past 10. Mr. and Mrs. Engel were there and witness drank a pint of beer, later Waller came in and said he came from Haymarket, that 300 men had been shot there by the police, and "we ought to go down there and do something." Engel replied *that whoever threw that bomb did a foolish thing; it was*

nonsense, and he did not sympathize with such butchery. He told Waller he had better go home as quick as he could, he said policemen were just as good as anybody else, that the revolution must grow out of the people and the police and militia would throw away their arms and go with the people.

VII.

LOUIS LINGG.

Inculpatory Evidence.

(I.) WILLIAM SELIGER, (A., 44, 37):

Seliger testifies (A., 44, 37, *et seq.*) substantially as follows: "On Tuesday I rose at half-past 7, and
 " after I got up Lingg came. I had previously told him
 " that I wanted those things (bomb and bomb material)
 " removed from my dwelling. He told me to work dili-
 " gently at those bombs and they would be taken away
 " that day. I took some coffee and after a time I worked
 " at some shells—at some loaded shells. I drilled holes
 " through which the bolt went, a shell like this (indicat-
 " ing shell introduced in evidence). I worked on the
 " shells half an hour. Lingg went to the west side to a
 " meeting; got back probably after 1 o'clock. He said
 " I didn't do much; I ought to have worked more dili-
 " gently. I said: 'I haven't any pleasure at the work.'
 " Lingg said: 'Well we will have to work very dili-
 " gently this afternoon.' During the afternoon I did dif-
 " ferent work at the shells. In the morning I had a con-
 " versation about the bolts. He told me he had not
 " enough of them. He gave me one and told me to go
 " to Clybourne avenue and get some that he had already

“ spoken to the man about. I got about fifty. I worked
 “ at the bombs during the whole of the afternoon, at dif-
 “ ferent times. Huebner, Munsenberg and Heuman
 “ were helping. I worked in the front room, also in
 “ Lingg’s room and the rear room. Lingg first worked
 “ at gas or water pipes, such as these (indicating).
 “ There were probably thirty or forty or fifty bombs
 “ made that afternoon. The round bombs had been
 “ cast before by Lingg, in the rear room on my
 “ stove, probably six weeks previous to the 4th of May.
 “ The first bomb I ever saw was in Lingg’s room; that
 “ was still before that; at that time he told me he was
 “ going to make bombs; I saw dynamite for the first
 “ time in Lingg’s room, about five or six weeks previous
 “ to the 4th of May; Lingg said every workingman
 “ should get some dynamite, that there should be con-
 “ siderable agitation; that every workingman should learn
 “ to handle these things; during that Tuesday afternoon
 “ Lingg said those bombs were going to be good fodder
 “ for the capitalists, and the police, when they came to
 “ protect the capitalists; nothing was said about when
 “ they wanted the bombs completed or ready; I only told
 “ him that I wanted these things out of my room; there
 “ was only a remark that they were to be used that
 “ evening, but nothing positive as to time. I left the
 “ house at half-past 8 that evening. Huebner was at the
 “ house probably from 4 to 6 o’clock; I did not see what
 “ he did; he worked in the front room with Lingg; I was
 “ in Lingg’s room; Munsenberg was there as long as
 “ Huebner; Thielen was there half an hour—quite that;
 “ I did not see what he was doing. The Lehmanns were
 “ at my house for a little while. I did not see what they
 “ were doing; they were in the front room. Heumann

“ also worked at the bombs. I left that house in the
 “ evening with Lingg. We had a little trunk with
 “ bombs in. The trunk was probably two feet long, one
 “ foot high and one foot wide. It was covered with
 “ coarse linen. There were round and pipe bombs in it.
 “ They were loaded with dynamite and caps fixed to
 “ them. I don’t know how many there were. The
 “ trunk might have weighed from thirty to fifty pounds.
 “ We pulled a stick, which Lingg had broken,
 “ through the handle. That is the way we
 “ carried the trunk, which was taken to Neff’s Hall,
 “ 58 Clybourn avenue. On the way to Neff’s Hall,
 “ Munsenberg met us. We took the package into the
 “ building, and through the saloon on the side into the
 “ hallway without, leading to the rear. After the bombs
 “ were put down in the passage way; there were different
 “ ones there, three or four, who took bombs out for them-
 “ selves. I took two pipe bombs myself. Carried them
 “ in my pocket. We went away from Neff’s Hall and
 “ left that package in the passage. The hall back of
 “ Neff’s Hall is known under the name of the ‘Shanty of
 “ the Communists.’ Different socialistic and anarchistic
 “ organizations met there. The north side group met there.
 “ I heard that the Saxon Bund met there. I don’t know
 “ any others that met there. When I left Neff’s Hall
 “ Thielen and Gustav Lehmann were with me. Later,
 “ two large men of the Lehr und Wehr Verein came to
 “ us; I believe they all had bombs. We went on to Cly-
 “ bourne avenue, north, toward Lincoln avenue, to the
 “ Larrabee street station, where we halted. Lingg and
 “ myself halted there. I don’t know what had become of
 “ the others. Some went ahead of us. Lingg and I had
 “ a conversation, that there should be a disturbance every-

“ where on the north side, and keep the police from going
 “ over on the west side. In front of the Larrabee street
 “ station Lingg said it might be a beautiful thing if we
 “ would walk over and throw one or two bombs into
 “ the station. There were two policemen sitting in front
 “ of the station, and Lingg said if the others came out
 “ these two could not do much. We would shoot these
 “ two down. Then we went from there north to
 “ Lincoln avenue and Larrabee street, where we
 “ took a glass of beer. Webster avenue station is
 “ near there. After we left the saloon we went a
 “ few blocks north, then turned about and came back to
 “ North avenue and Larrabee street. While we stood
 “ there the patrol wagon passed. We were standing
 “ south of North avenue and Larrabee street. Lingg said
 “ that he was going to throw a bomb; that was the best
 “ opportunity to throw the bomb, and I said: ‘ It would
 “ not have any purpose.’ Then he became quite wild,
 “ excited; said I should give him a light. I was smoking
 “ a cigar and I jumped into the front opening before a
 “ store and lighted a match, making as if I intended to
 “ light a cigar, so I could not give him a light. When I
 “ lighted my cigar the patrol wagon was just passing.
 “ Lingg said he was going to go after the wagon to see
 “ what had happened, saying that something had certainly
 “ happened on the west side, some trouble; the patrol
 “ wagon was completely manned, going south on Larra-
 “ bee street; we were four or five houses distant from
 “ the station; then I went into a boarding house between
 “ Mohawk and Larrabee streets and lighted a cigar; then
 “ we went towards home. First Lingg wanted to wait
 “ until the patrol wagon would come back, but I impor-
 “ tuned him to go home with me. We got home proba-

“ bly shortly before 11, I cannot tell exactly. On the
 “ way home Lingg asked me whether I had seen a no-
 “ tice that a meeting of the armed men should be held on
 “ the west side; I said I had seen nothing; Lingg
 “ wanted to go out; I took the *Arbeiter Zeitung*, tore it
 “ in two parts; he took one and I one; thereupon he said:
 “ ‘ Here it is!’ and called my attention to the word *Ruhe*.
 “ This paper, this here (paper marked People’s Exhibit
 “ No. 4), is the same that I saw in my house. I didn’t
 “ know the meaning of the work *Ruhe* until the time I
 “ saw it. Lingg said there was to have been a meeting
 “ on the west side that night, and he was going to go
 “ down to it—that *Ruhe* meant that everything was to go
 “ topsy-turvy; that there was to be trouble; he said that
 “ a meeting had been held at which it was determined that
 “ the word *Ruhe* should go into the paper, when all the
 “ armed men should appear at 54 West Lake street; that
 “ there would be trouble. After that talk we went
 “ away; Lingg wanted to go to the west side, and I
 “ talked with him to go with me to 58 Clybourn avenue.
 “ Lingg and I went there; there were several persons
 “ present at Neff’s Hall. I did not speak with Lingg
 “ at Neff’s Hall; a certain Hermann said to him in an
 “ energetic tone of voice: ‘ You are the fault of all of it.’
 “ I did not hear what Lingg said to that; they spoke in a
 “ subdued tone; somebody said a bomb had fallen which
 “ had killed many and wounded many; I did not hear
 “ what Lingg said to that. On the way home Lingg said
 “ that he was even now scolded, chided for the work he had
 “ done; we got home shortly after 12. We laid the bombs
 “ off on our way on Sigel street, between Sedgwick and
 “ Hurlbut, under an elevated sidewalk. I laid two pipe
 “ bombs there; I saw Lingg put some bombs there; I
 “ don’t know what kind.”

On cross-examination this witness admitted that he had been under arrest, had himself been indicted for murder of the policeman in this case, that he had been furnished money from time to time by Capt. Schaack, and that he had from time to time, at the instance of the officers, signed *different* written statements as to the occurrences testified to; statements that differed from one another, but had finally made substantially the same statement as he had testified to. He also stated that Schaack had, from time to time, paid his wife money, since his arrest, and stated (A., 50) that the agreement on Tuesday afternoon was that they were to go that evening with the bombs they were manufacturing to Clybourn avenue; that there was no agreement that the bombs were to be taken anywhere else, nor what was to be done with them after they were taken there; that he had never heard of any agreement that any of the bombs manufactured on May 4th were to be taken by anybody to the Haymarket; that they were not on that occasion making bombs to take to the Haymarket and destroy the police; they were to be taken to Clybourn avenue that evening, and the witness stated that he could not say that a single bomb was made for use at the Haymarket meeting; that in point of fact they were made everywhere to be used against the capitalists and the police, and that he could not say who had the bomb at the Haymarket on the night of May 4th, and did not know anybody who was expected to be at the Haymarket.

Mrs. Seliger's testimony (A., 51-53) substantially corroborates the testimony of her husband as to the fact that Lingg was making bombs, and as to the fact that the bomb-making was carried on at her house on the 4th day of May, 1886.

The very making of dynamite bombs ought to be made a criminal offense. The trouble with this question is that it is not.

The Chicago Tribune strikes the questions arising in this case aright in an article published the other day. It says:

“ Mr. Merritt, the Democratic leader of the house at Springfield, has introduced a bill to define with greater clearness and precision the crime of unlawful conspiracy and provide the same punishment for accessories and advisers as for principals in the commission of offenses against public order and security. The bill is carefully drawn, and it should receive overwhelming support from both parties. Its provisions are summarized as follows:

“ It provides that any person who shall by speaking to any public or private assemblage of people, or by writing, printing, or publishing anything, incite local revolution or the overthrow or destruction of the existing order of society, shall be deemed guilty of conspiracy, and if, as a result of such speeches or writings, human life is taken, or person or property is injured, the person so speaking or writing shall be deemed guilty of having conspired with the person or persons who actually committed the act and be treated as a principal in the perpetration of the same.”

This law was probably framed to meet this very case, but the question for this court is, can you hang a man before the law is passed. The charge in this case is that Lingg aided and abetted an unknown person who threw the bomb and killed officer Degan—just that and nothing more. Does the manufacture of gunpowder or of bullets, or of lead or of pistols, make a party *particeps criminis* with whoever uses these as the means of murder? It may be

said if the articles had never been made, the murder would never have been committed.

If Lingg agreed with any one that he would make the bomb and any other person should throw it, and either Lingg himself or such other person did throw it, he would be guilty under this indictment. If he made these bombs under a wild and foolish but indefinite craze, and without having any definite or formed purpose, then he is not guilty under this indictment, notwithstanding some other person may have got hold of one of these very bombs and without Lingg's knowledge or aid, may have thrown it and killed Officer Degan. The aiding and abetting which the law contemplates, and which is essential to legal guilt, is not in furnishing the land upon which one man kills another, or the building in which it is done, or making the powder or the bullet or the pistol with which it is done. It must be a guilty participation in the crime itself. Which way is this? The proof does not show which way it is. A verdict must be sustained by evidence. This case presents simply suspicion. The world has advanced too far, society is educated too well, to hang a man because it is scared or because it does not know what the fact is. Let us have the law passed and perhaps enlarged in its scope, before we hang any one.

ILLEGAL EVIDENCE.

These defendants were convicted in the main by the introduction of illegal evidence.

I.

MOST'S BOOK.

This book was written and published in German in the city of New York about three years before the Hay-market meeting. Its delectable teachings were how to make bombs in the most approved style; how to poison daggers so that the slightest scratch produced the most excruciating convulsions and most painful death. (Vol. of Exhibits 32 and Vol. of Exhibits A.)

It was never translated into English until done by the prosecution in this case. Two of the plaintiffs in error, Fielden and Parsons, cannot read German (A., 269; M, 320), and consequently never heard the contents of this book, by which, more largely than from any other fact, they were convicted of murder, until the trial, when it was paraded before the jury and its most diabolical sentences and suggestions were read in evidence and argument. The writer of this book did not know the Hay-market meeting would ever take place, and these defendants never had any connection with the book such as would make it competent evidence, direct or remote. It could be introduced to condemn this very court just as lawfully and with as much foundation as it was introduced against these defendants.

(1.) FRICKE testified that *he saw the book in the*

library of the International Workingpeople's Association, which is in the same building, but not in the same room as that in which the Arbeiter Zeitung was published. (A., 41; T, 474.)

(2.) HUSBURGER, the librarian, sold some copies of it at picnics and mass-meetings, at which with a crowd Spies, Parsons and Fielden, and sometimes Neebe and sometimes Schwab and perhaps Fisher were present. (A., 41; T, 445-6.) This witness admitted that *none of the defendants* had anything to do with the selling of the book, and, so far as witness knew, never saw the book or ever read it. (A., 42; T, 485-6.)

(3.) SELIGER saw the book at a meeting on the north side sold by Hueber, the librarian. (A., 49; T, 532.)

There was also in the Arbeiter Zeitung an advertisement as follows: "Most's Revolutionary Warfare has arrived and can be had of the librarian, at ten cents a copy."

The Arbeiter Zeitung was a corporation, incorporated under the general laws of the State of Illinois, had stockholders, directors and officers, but these defendants had no stock and were not officers, and had no voice in its direction. Two of the defendants had been hired to edit it, Spies at \$18 per week, and Parsons at \$8 per week.

(4.) Officer BONFIELD swore that Fischer admitted having read about fulminating caps in Most's book. (A., 28; T, 354.)

(5.) Capt. SCHAAK swore that Lingg learned to make bombs from Most's book.

The whole of this book was introduced in evidence against all the defendants and over the objections of

such defendants. It is impossible to imagine anything more incompetent and unlawful or more prejudicial. From the time of its introduction it was waved like "a bloody shirt" before the jury, and with this the imagination of the prosecution knew no bounds in denunciation, and by it, and by the book in evidence, the attorneys for the state aroused and made uncontrollable the passions and prejudices of the jury. And yet most plainly, in every regard, this book was simply *res inter alios acta*.

It was written and published three years before, in a distant city, by a stranger. *One* man of the eight on trial had read in it of fulminating caps; *one* man had from it learned to make bombs. Several were Germans and the book existed in German. Two of the men had been employed by a corporation to edit a paper at a fixed price per week. That paper contained a paid advertisement for sale of the book elsewhere. It was found in the same building, but in another room to the Arbeiter Zeitung, but the crowning fact of its admissibility lies in the circumstance that several of the defendants ate cheese and drank lager at the same mass-meeting or picnic where the industrious peddler was plying his vocation with this book. If thus disastrous to those defendants for drinking beer and eating cheese, what would become of the poor, lorn peddler himself, if he had been gathered in the dragnet of this prosecution?

II.

BLOODY CLOTHES.

The prosecution were permitted to introduce over the objection of the defendants all the bloody clothes it could find avowedly worn by officers other than Mathias J. Degan. These blood-stained garments were held up before the jury—and holes made in them by pieces of shell were exhibited. This was to arouse in the jury a proper scent for blood, and not because they were in any way pertinent.

III.

LETTER OF MOST TO SPIES.

Spies was put on the stand to deny his connection with the bomb-throwing, as testified by Thompson (*ante*, page 15). His examination in chief was limited to that inculpatory evidence. On cross-examination he was asked to identify a certain letter and postal card from Johann Most, and upon such identification it was introduced in evidence.

The letter was of ambiguous and doubtful import, and as to whether a person named was trustworthy. Most proposed to send some of "*his medicine*" to the Hocking Valley, where labor troubles then existed. The postal followed a day or so afterwards, and is wholly indefinite.

These were written in 1884, and had laid in Spies' drawer in the *Arbeiter Zeitung* since their dates. The prosecution ransacked this building the next day after the Haymarket meeting, without search warrant, and

found them. Spies swore he had no recollection of having received or having read them. He recognized the handwriting of Most, and he probably received them, as they were addressed to him; he did not remember of having answered either of them; he never carried on any correspondence with Most and gave no directions for the shipment of the "*medicine*."

This evidence was unlawful evidence, because :

(1.) This testimony was the result of the violation of the laws of the examination of a witness.

(2.) It was obtained by an unreasonable search, and the defendant by the wrongful act of the officers and the court was forced to give evidence against himself.

(3.) Because the act was the act of a stranger. Any person is liable to receive any sort of a letter, but such letter becomes criminative of him only upon the prosecution showing *some act done by the defendant* which connects him with the writing of the letter. These were most clearly not competent evidence against the seven other defendants, against whom it was also introduced. This court, in *Gifford v. The People*, has held upon the subject of admissibility such documents as follows, 87 Ill., 210, 214: *It was never competent to introduce in evidence against a party an unanswered letter addressed to him, even when found among his effects and in his possession, without evidence that the letter had been acted upon by the party to whom it is addressed.*

Wharton Crim. Law, 9th Ed., §§ 644, 682.
Com. v. Edgerly, 10 Allen, 187.

As to the manner of obtaining this letter is the following:

OFFICER JONES (A., 62, 1; J, 90): He was present on the 5th of May, at the Arbeiter Zeitung office, when

a locksmith opened different drawers in different offices, and the desk in the corner of the office on the second floor; in the drawer of the desk he found among other things a number of letters directed to Spies. (A., 63; I, 106.)

OFFICER FLYNN was with Officer Jones at the time he searched the desk of Spies. He says (Abst., 65): "We found this box of letters; they were all found in 'Spies' drawer. *I took the letters, put them into this box, carried them to the station and delivered them to 'Mr. Furthmann, assistant state's attorney.'*"

Spies had been put on the stand for a specific purpose. Thompson had sworn that Spies and Schwab were rambolling about in the crowd, talking, as he followed them, of pistols and police, and saying, "You think one is enough: 'don't you think we had better go and get more;'" when Schwab was on his road to Deering, and when Spies was notoriously on the speakers' wagon, Gilmer had sworn that Spies was in the alley and actually lighted the fuse of the bomb, when he was in fact, in Zepf's hall, or on his way there. Gilmer had also sworn that Fisher was with the group when he was in Zepf's hall. After a crowd of witnesses in denial and to make assurance doubly sure, Spies was put on the stand and was made a witness in his own behalf, simply as to these matters sworn to by Thompson and Gilmer. He did not even swear that he was not guilty and did not aid and abet whoever threw the bomb. Having denied the things proven, he was turned over to the State. It stepped outside the limits of the examination-in-chief, made Spies its own witness as to this new matter, and forced him to give testimony against himself. As to the new matter, the case stands as though Spies had not been put on the stand in his own behalf at all, but

as though the prosecution had called him from the dock to the witness-box and had forced him to answer these questions. This proceeding was in violation of the constitution of the United States and of this state. Again, Spies lived under protection of the constitution of the United States, and of this state, as all men in this state do, in reference to unreasonable searches and seizures. The constitution of the United States, article 4 of the amendments (Starr & Curtis' Stat., 36) upon these two subjects, provides:

“The right of the people to be secure in their persons,
“houses, papers and effects, against unreasonable searches
“and seizures, shall not be violated, and no warrants shall
“issue but upon probable cause, supported by oath or
“affirmation and particularly describing the place to be
“searched, and the person or thing to be seized.”

Article 5 of the amendments provides:

* * * Nor shall any person “be compelled in any
“criminal case to be a witness against himself.” * * *

The constitution of the State of Illinois of 1818 (Starr & Curtis' Stat., Secs. 7 and 9, p. 64) in substance, copies and adopts the two foregoing provisions of the constitution of the United States. The same two provisions are copied into and re-adopted by the constitution of 1848. (Starr & Curtis, 89-90.) The exact language in reference to unreasonable seizures is also adopted in the constitution of 1870, and in reference to compulsory evidence the provision is as follows (Starr & Curtis, 104):

“No person shall be compelled in any criminal case to
“give evidence against himself.” * * *

The Supreme court of the United States, the highest tribunal of the land, and whose duty is especially to interpret the constitution of the United States, in the case

of *Boyd v. U. S.* (116 U. S., 616), have expressly passed upon these questions, and have defined what is unreasonable search, what the rights of the defendants under such circumstances are, and what protection the constitution gives a party whose rights are thus invaded, and how evidence produced by unreasonable search is regarded. The court, after citing *Entic v. Carrington* (19 Howell's State Trials, p. 1,029), uses the following language:

“ Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony, or of his private papers, to be used as evidence to convict him of crime, or to forfeit his goods, are within the condemnation of that judgment. In this regard the fourth and fifth amendments run almost into each other.”

* * * * *

“ Any compulsory discovery by extorting a party's oath, or compelling the production of his private books or papers, to convict him of crime or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman. It is abhorrent to the instincts of an American. It may suit the purposes of despotic power, but it cannot abide the pure atmosphere of political liberty and personal freedom.”

* * * * *

“ It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon.”

We commend the reading of the entire case to the court and to the prosecution. As Governor Reynolds said of his Bible: “ There is a great deal of good reading in it.”

Watts v. The State, 5 W. V. Reports, 532, is to the same effect, and substantially the same language as given by the above court. It is to preserve this principle that the courts have also decided, in all cases, that the confession of a defendant cannot be introduced against him, until it is shown that such confession was voluntary, and was not obtained by extortion through threats or promises.

In the case at bar the police took a locksmith for a search warrant. Having found these letters, they turned them over where they would "do the most good" to Mr. Furthman, assistant state's attorney, and when Spies was on trial, the court put the thumb-screws to him and compelled him to testify against himself. To a novice all this looks as though this was "sharper than the law allows."

IV .

Bombs, fulminating caps and other articles fractured by experiments of the police after May 4th, with dynamite claimed to have been found in the Arbeiter Zeitung office and at Linng's house. Both of these were the result of unlawful seizures, and they are objectionable under the cases and principles previously cited. (A., 160; K, 516; A., 60.)

V.

Combustible tin cans found in the north-western part of the city June 2, 1886, four weeks after the Haymarket meeting. There was no pretense of a connection between these articles and the Haymarket meeting. Officer Degan was not killed by any such instrument; no effort made to connect the defendants with these cans or their construction; they were introduced in connection with other illegal testimony, like that of Most's book, and as evidence of a general conspiracy to destroy the city. No pretense was made that the case presents evidence of a conspiracy between the defendants in reference to destroying the city.

VI.

FLAGS, MOTTOES, ETC.

These were also found in the Arbeiter Zeitung office, and was the result of the search previously described and were consequently unlawful evidence.

THE EFFECT OF ILLEGAL EVIDENCE UPON A VERDICT.

"Properly speaking," says Waterman in his New Trials, Vol. II, p. 613, "the reception of *illegal evidence* "should vitiate the verdict without inquiry as to the "probable effect in any given case. Its inevitable tendency is to mislead, and the extent of the mischief it may "have done cannot always be calculated or guessed at. " * * * Where the illegal testimony is such as to be "a gross violation of well-settled principles which govern

“proof, clearly giving the party who offered it an unlawful advantage, its admission has been held *per se* a ground for a new trial, whether the jury was directed to disregard it or not.”

In *Penfield v. Carpenter*, 12 Johns., 350, the plaintiff proved his own declarations as proof in support of his own case.

The Supreme court says:

“The admission of such testimony was *illegal* and dangerous, and no subsequent caution or advice by the judge, that the jury ought to disregard what witnesses had sworn, can cure the irregularities. The law forbids such testimony, because it may have an influence on honest jurors who are unconscious of the impressions which they retain, notwithstanding the effort of the court to obviate them.”

A distinction in this regard occurs between *irrelevant* testimony and *unlawful* testimony:

Irrelevant testimony is where evidence is competent from one point of view, becomes incompetent because of its connection with something else, or where it becomes improper by reason of a failure to be connected with other evidence. In such cases no principle of law is violated, but it is one of the accidents of a trial. In reference to *illegal* testimony, however, Mr. Waterman, Vol. 2, p. 620, says in such cases, “the rule rests as much upon grounds of public policy, which forbid the settled and established rules of evidence to be infringed with impunity, as upon the anticipated injustice which might be wrought by the cases themselves.”

In the cases under consideration the evidence was shockingly unlawful, and in character most dangerous in its

consequences, and no caution was interposed by the judge as to its effect. In short, the illegal evidence is the biggest half of the whole case.

WHERE THESE DEFENDANTS WERE AT THE TIME OF THE HAYMARKET MEETING.

SAMUEL FIELDEN was at the meeting, and was the last speaker.

ALBERT R. PARSONS was there a part of the time, but was in Zepf's Hall, a half block away, drinking beer with his wife and friends when the bomb exploded.

MICHAEL SCHWAB was at the Haymarket. He left his own home at twenty minutes before 8; arrived at Arbeiter Zeitung meeting about 8; stopped there, say, ten minutes; went to Haymarket after Spies, in ten minutes; walked around the Haymarket before the meeting hunting Spies, say ten minutes; went back to court house in ten minutes; went to Fullerton avenue in forty-five minutes; spent with Prusser and hunting committee ten minutes; went to the prairie in ten or fifteen minutes; spoke twenty-five minutes; went to a beer saloon and staid, say, thirty minutes, and walked home, reaching there about 11 o'clock.

AUGUST SPIES was present at the Haymarket; mounted a wagon; called the meeting to order; inquired for Parsons; went to hunt him in the crowd; returned and made a conciliatory speech, and remained on the wagon until the dispersion of the meeting; he was followed after his speech by Parsons and Fielden; while Fielden was speaking a rain cloud appeared in the north-west, and Spies moved to adjourn to Zepf's Hall; Fielden said he would close in a mo-

ment, when they would all go home; about half the crowd went away, and the police then came and ordered the meeting to disperse; Spies then got down, assisted by his brother Henry, and as he reached the opposite sidewalk the bomb exploded.

ADOLPH FISHER was with Wandray at Zepf's Hall, and was seen there at that time by many witnesses. (*Aute*, page 34.)

ENGEL was at his own home indulging in the nationality of drinking beer with some friends; Waller came there, and, on relating the throwing of the bomb, Engel replied that *whoever threw the bomb did a foolish thing*.

OSCAR NEEBE was not there, but was at home. It does not appear in evidence that he was at the meeting at all.

LOUIS LINGG was also at his own home, at 442 Sedgwick street (A., 44); see testimony of William Seliger (A., 45).

OTHER ILLEGAL EVIDENCE.

Schnaubelt is doubtfully identified by Gilmer as the party who threw the bomb. The prosecution was permitted over the objection of the defendants to prove that a day or so afterwards he disguised himself by shaving off his beard and whiskers.

Wharton, Crim. Ev., § 750, says that when a suspected person attempts to evade prosecution by flight or attempts to disguise himself, this may be shown to prove the guilt of *the party*, but he says also, § 699:

“ When the common enterprise is at an end, whether
“ by accomplishment or abandonment, no one of the con-
“ spirators is permitted by any subsequent act or declar-

“ation of his own to affect the others. Even the most solemn admission made by him after the conspiracy is at an end is not evidence against accomplices. Nor can the flight of one conspirator, after such time, be put in evidence against the others.”

In *People v. Stanley*, 47 Cal., 112, the court says: “At most, it is but a circumstance tending to establish a consciousness of guilt in the person fleeing; and it would be extending the principle to a great length to hold that the flight of one person tends to establish the guilt of another person. We have been referred to no case which goes to that extent.”

This case was reversed upon the sole ground that the evidence of the flight of a co-conspirator was introduced against the other conspirators, such co-conspirator who had fled not being on trial. Schnaubelt was not on trial.

This principle is so well established that it may be considered almost elementary. It is based upon the well-settled doctrine that *after a conspiracy has been established*, the acts and declarations of one are evidence against all, but after the accomplishment of the objects of the conspiracy or its abandonment, then the action becomes individual, and each man acts for himself and is responsible for himself.

We beg leave to cite to your Honors the following cases:

Commonwealth v. Thompson, 99 Mass., 444.

State v. Westfall, 49 Iowa, 328.

Strady v. State, 5 Caldwell, 300.

State v. Fuller, 39 Vermont, 74.

Hunter v. Commonwealth, 7 Grattan, 641.

Hudson v. Commonwealth, 2 Duval, 531 (Ky).

Rueber v. State, 25 Ohio State, 464.

People v. Stevens, 47 Mich., 411.

People v. Arnold, 46 Mich., 68.

Spencer v. State, 31 Tex., 64.

Abe v. State, 31 Texas, 416.

Commonwealth v. Ingraham, 7 Gray, 46.

Ormsbee v. People, 53 New York, 472.

Morris v. State, 50 Ohio, 439.

State v. Arnold, 48 Iowa, 566.

State v. Rawler, 65 N. C., 334.

Phillips v. State, 6 Tex. Appeal, 314.

CONSPIRACY.

The defendants were indicted for murder, and for aiding and abetting, as accessories of the murder. The prosecution might prove, under this indictment, that defendants agreed to commit the crime charged, or threatened to commit it, or made preparations; but the doctrine of conspiracy, as such, has no relations to this case. Of course, if the defendants agreed to do any act, and murder lay in the path of it, and was embraced within it, such agreement is admissible, not because of a conspiracy, or its doctrines, but because an agreement to do a thing embraces an agreement to do everything necessary to its accomplishment. If I make an agreement to walk a mile, that agreement embraces every stepping necessary to its accomplishment. An unlawful conspiracy is a separate and distinctive crime, which becomes complete and is punishable because of the very unlawful agreement, and may be aggravated by the commission

of the overt act contemplated, but can never be created by it.

In trials for conspiracy, it is necessary to prove the union of the minds conspiring or the conspiracy first, and then, that union being once established, the acts and declarations of each become the acts and declarations of all. This case seems to have proceeded upon a sort of jumble of all doctrines, and particularly the law of conspiracy was reversed and the acts and declarations of each person caught in the drag-net of this prosecution were used to prove a conspiracy of the parties, and the guilt of all of the particular crime charged. The case ought to be reversed for the jumble alone. These doctrines are sustained by the following cases:

In the case of the *State v. George*, 7 Ired., 321, where acts and declarations of a party other than the defendant were allowed to be introduced against him, upon the statement made by the prosecutor that he intended to introduce witnesses to prove a conspiracy between the prisoner and such third person, a reversal was ordered upon this ground. We quote from the opinion of RUFFIN, Chief Justice, commencing at page 328 of the report:

“ I think there ought to be a *venire de novo* upon the
 “ ground, simply, that the acts and declarations of the
 “ woman, which were given in evidence, are not of such
 “ a nature as can affect the prisoner. To make the acts
 “ and declarations of one prisoner those of another, or so
 “ allow them to operate against another, it must appear
 “ that there was a common interest or purpose between
 “ them.”

Mr. Roscoe says (7th Am. Ed., p. 417, § 416):

“After the existence of a conspiracy is established, and

“ the particular defendants have been proved to have been
 “ parties to it, the acts of other conspirators may in all
 “ cases be given in evidence against them, if done in fur-
 “ therance of the common object of the conspiracy, as also
 “ may letters written and declarations made by other
 “ conspirators, if they are part of the *res gestæ* of the
 “ conspiracy and not mere admissions.”

See also 1 Greenleaf, Evid., § 111.

That the erroneous introduction of evidence is not cured by its subsequent exclusion was decided in *Howe v. Rosine*, 87 Ill., 105.

It follows that the only admissible evidence was threats or an agreement and other preparations to commit this crime. If that agreement or preparation was by one of the defendants then, if the motion for a separate trial was properly overruled, the evidence of that agreement should have been introduced and restricted, at the time of its admission by the court, to that defendant, and if the act of two of them it should have been restricted to the two, etc.

If different parties are engaged in a common conspiracy, but act separately and independently, only the party acting can be held responsible.

Starkie on Ev., part 1, Phila. Edition 1842, *324, says:

“ Where it appeared that there was a conspiracy to
 “ raise war in the North riding of Yorkshire, and that
 “ there was at the same time a conspiracy in the West
 “ riding, in which latter one it took place, and there was
 “ no evidence to show that those in the one riding knew
 “ of the conspiracy in the other, it was held that the
 “ former could not be implicated in the acts of the latter,
 “ although they concurred at the same time to the same
 “ object.”

In Killyng's Crown Cases, *24, the court says:

“ In the next place, we being informed that there was
 “ a conspiracy to raise a war in the North riding of
 “ Yorkshire, as well as the West riding, where some did
 “ actually appear in arms, yet it could not be proved that
 “ those in the North riding did agree to the rising that
 “ there was in the West riding, or that they knew any-
 “ thing about it, and so would not be within the first reso-
 “ lution,” namely, would not be responsible for the acts
 of the conspirators in the west riding. To apply this
 doctrine in the case at bar, if it should be conceded upon
 the part of all the defendants that there was a general
 unity of design to bring about a revolution in the order
 of society; yet, if certain of the defendants, of their own
 motion, and without any concert of action or consultation
 with the others, proceeded to do an act of their own
 volition, which was not at the time within the contempla-
 tion of the others, such other defendants would not be
 implicated in the consequences of such independent act.

See also for the same doctrine, 88 North Carolina, 627.

ONE CRIME CANNOT BE ESTABLISHED BY PROOFS OF ANOTHER CRIME.

Any unlawful agreement to do any other act than
 that charged in this indictment, is a separate and distinct-
 ive offense. Any agreement to do that act is merged in
 this offense. It is elementary that crimes cannot be proved
 by evidence of other crimes. Wharton says, § 30:

“ A defendant ought not to be convicted of the offense
 “ charged, simply because he has been guilty of another
 “ offense. Hence, when offered simply for the purpose of
 “ proving his commission of the offense on trial, evidence

“ of his participation, either in act or design, in commis-
 “ sion or in preparation, in other independent crimes, can-
 “ not be received.”

The same rule laid down in *Schaffner v. The Commonwealth*, 72 Penn. State, 60. The law is thus stated by AGNEW, Judge:

“ It is a general rule that a distinct crime, unconnected
 “ with that laid in the indictment, cannot be given in evi-
 “ dence against a prisoner. It is not proper to raise a
 “ presumption of guilt on the ground that, having com-
 “ mitted one crime, the depravity it exhibits makes it
 “ likely he would commit another. Logically, the com-
 “ mission of an independent offense is not proof in itself
 “ of the commission of another crime. Yet, it cannot be
 “ said to be without influence on the mind, for, certainly,
 “ if one be shown to be guilty of another crime, equally
 “ heinous, it will prompt a more ready belief that he might
 “ have committed the one with which he is charged; it
 “ therefore predisposes the mind of the juror to believe
 “ the prisoner guilty. To make one criminal act evidence
 “ of another, the connection between them must have ex-
 “ isted in the mind of the actor, linking them together for
 “ some purpose he intended to accomplish; or it must be
 “ necessary to identify the person of the actor by a con-
 “ nection which shows that he who committed the one
 “ must have done the other. Without this obvious con-
 “ nection, it is not only unjust to the prisoner to compel
 “ him to acquit himself of two offenses instead of one,
 “ but it is detrimental to justice to burthen a trial with
 “ multiplied issues that tend to confuse and mislead the
 “ jury.”

This rule has been very strongly laid down by this

court. It is said in *Kribs v. The People*, 82 Ill., 424, as follows (p. 426):

“On the trial the court allowed the people, over the objection of the defendant (who was indicted for embezzlement), to prove that the defendant had collected or received money belonging to other parties, and on several occasions, which he had fraudulently converted to his own use. This was error. The evidence should have been confined to the charge for which the defendant was indicted. On the trial of this indictment the law did not require him to come prepared to meet other charges, nor does it follow, because he may have been guilty of other like offenses, that he was guilty of the offenses charged in the indictment.”

“The evidence should have been confined strictly to the offense charged in the indictment. This was not, however, done, but improper testimony allowed to go to the jury, which could not fail to prejudice the rights of the defendant.”

For the error above indicated alone the case was reversed.

To the same effect, we cite *Watts v. The State*, 5 W. Va., 532.

So in *Devine v. The People*, 100 Ill., 290, it is said (page 293):

“In view of * * * the consideration that the life of the accused was involved in the issue, it became highly important to him, as well as essential to the due administration of justice in the prosecution of the case, that the state should be held to at least a substantial, if not a strict, observance of the well-established rules governing the production of testimony, in its efforts to establish the charge against him. The trial should have been

“conducted with the utmost fairness, and no matter or
 “thing should have been admitted in evidence, against
 “the objections of the accused, which did not prove or
 “tend to prove the issue, more especially if the evidence,
 “when admitted, would have had an improper influence
 “upon the minds of the jury, or place the accused at a
 “disadvantage before them.”

The same rule was applied in *Sutton v. Johnson*, 62 Ill., 209.

Under this head, we desire to quote further from 1 Phillips on Evidence, 765, 766 (page 644, 5th Am. Ed.):

“In criminal cases, it is purely the duty of courts of
 “justice to prevent evidence being given which would sup-
 “port a charge against the prisoner of which he was not
 “previously apprised, under the pretext of its supporting
 “some presumption of the offense which is the subject of
 “the indictment. In treason, therefore, no evidence is to
 “be admitted of any overt act that is not expressly laid
 “in the indictment. This was the rule at common law.
 “It is again prescribed and enforced by the statute of
 “William III, which contains an express provision to that
 “effect in consequence of some encroachments that had
 “been made in several state prosecutions. The meaning
 “of the rule is not that the whole detail of facts should
 “be set forth, but that no overt act, amounting to a
 “distinct, independent charge, though falling under the
 “same head of treason, shall be given in evidence, unless
 “it be expressly laid in the indictment; but still, not con-
 “duced to the proof of any of the overt acts that are
 “made, it may be admitted as evidence of such overt
 “acts.”

Roscoe, in his work upon criminal evidence, 7th Am. Ed., § 90, p. 90, states the rule:

“It may be laid down, as a general rule, that in criminal
 “as in civil cases the evidence shall be confined to the
 “point in issue. In criminal proceedings it has been
 “observed that the necessity is stronger, if possible, than
 “in civil cases of strictly enforcing this rule; for where a
 “prisoner is charged with an offense, it is of the utmost
 “importance to him that the facts laid before the jury
 “shall consist exclusively of the transaction which forms
 “the subject of the indictment and matters relating
 “thereto, which alone he could be expected to come pre-
 “pared to answer.”

In *Kinchilow v. The State*, 5 Humph., 9, the court say (p. 12):

“It is well settled that no proof of the admission of one
 “distinct substantive offense shall be received upon a trial
 “for the commission of another; *a fortiori*, shall not state-
 “ments of an intention to commit it; the only tendency of
 “such testimony necessarily is to prejudice the minds of
 “a jury, as it can by no possibility establish or elucidate
 “the crime charged.”

The court in 3 Caldwell's Reports, 362, *Wiley v. The State*, uses the following language (p. 372): “The
 “general rule is that nothing shall be given in evidence
 “which does not directly tend to the proof or disproof of
 “the matter in issue; and evidence of a distinct substantive
 “offense cannot be admitted in support of another offense.”

The doctrine of these cases and this principle applies to the vast amount of utterances and indefinite purposes of some of these defendants, but which do not constitute an agreement or preparation to commit the particular offense or any offense.

ACTS MUST BE UNDER COMMON DESIGN.

Two persons having made an unlawful agreement, it is only acts and declarations done in furtherance of the common design which are admissible.

In *People v. Stanley*, 47 Cal., 113, the court used the following language (p. 118):

“The rule is well settled that the acts of an accomplice
“are not evidence against the accused, unless they constitute part of the *res gestæ*, and occur during the pendency of the criminal enterprise, and are in furtherance
“of its objects.”

In *State v. George*, 7 Ired., 321, the court say:

“Before the acts and declarations of one of the conspirators can be received against another, it must be
“shown that they were acts done and declarations uttered
“*in furtherance of the common design*, or in execution of
“the conspiracy. They must be acts and declarations of
“the one that were authorized by the other, or such as
“became necessary in the prosecution of the joint business or criminal conspiracy.”

In *Rev v. Hardy*, 25th State Trials, 1, the majority of the judges held that a letter purporting to be written from one alleged conspirator to another was not admissible in evidence save as against the party writing it, the court using the following language: “A bare relation of facts
“by an alleged conspirator to a stranger was merely an
“admission which might affect himself, but which could
“not affect a co-conspirator, since it was not an act done
“in the prosecution of that conspiracy.” This rule is approved by Mr. Starkie in his valuable work on evidence. 2d Ed., Vol. 2, page 326.

A CONVICTION OF THESE DEFENDANTS WAS HAD WITHOUT
ANY PROOF OF A CORPUS DELICTI.

What is a *corpus delicti*? Simply, the body or essence of the wrong. What is the *corpus delicti* or body of the wrong in the case of a principal charged with homicide?

It is that the defendant did the criminal act. What is the *corpus delicti* in reference to an accessory? It is that he aided and abetted in the killing.

Wharton's Crim. Ev., 3,325, and note as follows, viz:
"The *corpus delicti*, the proof of which is essential to
"sustain a conviction, consists of a criminal act; and to
"sustain a conviction there must be proof of the defend-
"ant's guilty agency in the production of such act."

"The latter feature, namely: criminal agency, is often
"lost sight of, but is as essential as is the object itself of
"the crime. Acts, in some shape, are essential to the
"*corpus delicti*, so far as concerns the guilt of the party
"accused. A may have designed the death of the de-
"ceased, yet if that death has been caused by another,
"A, no matter how morally guilty, is not amenable to the
"penalties of the law, if he has done and advised noth-
"ing in respect to the death."

In this case there is not the slightest evidence of *corpus delicti* as to any of the defendants, except in the testimony of Gilmer, which is completely overthrown.

THE COUNSELING TO CONSTITUTE ACCESSORYSHIP.

Wharton, in his Criminal Law, 9th edition, Vol. 1, Sec. 226, note entitled "Modes of Instigation," says: "Coun-
"seling, to come up to the definition, must be special.

“ Mere general counsel, for instance, that all property
 “ should be regarded and held as common will not con-
 “ stitute the party offering it accessory before the fact to
 “ a larceny; free-love publications will not constitute their
 “ authors technically parties to sexual offenses which these
 “ publications may have stimulated. Several youthful
 “ highway robbers have said that they were led into
 “ crime by reading ‘ Jack Shepard ’ ; but the author of
 “ ‘ Jack Shepard ’ was not an accessory before the fact
 “ to the robberies to which he thus added impulse.”
 “ * * * What human judge can determine that there
 “ is such a necessary connection between one man’s advice
 “ and another man’s action, as to make the former the
 “ cause of the latter?”

I know of no more appropriate illustration of the legal status and liability of the defendants in relation to their intemperate utterances, or in relation to their liability under all the evidence, than to recall the history of the formation of the republican party. It was a party which had for its object the reformation of the civil society and the civil institutions in this country. The most radical of its leaders characterized the Constitution of the United States as “ *a league with hell*.” Underground railroads were everywhere established leading from Mason and Dixon’s line to Canada, and people conspired to do the act, contrary to the constitution and laws of the United States, of aiding and abetting the slave in his escape. If he were arrested by the officers of the law, whose duty it was to arrest him, people were guilty of a conspiracy to rescue him, and they often committed the overt act of such unlawful conspiracy by actually rescuing him and aiding in his escape. The storm finally culminated, and bye and bye old John Brown, caught up by the inspiration of the oc-

casion, committed an offense against the laws of Virginia at Harper's Ferry.

The question arising is: was everybody who made speeches for this party guilty of the offense of which John Brown was convicted? The distinction exists in that case as in this. Everybody who knew John Brown's purposes, and knowing them, aided, assisted and abetted him, were equally guilty with him. But those who did not know his purposes, and who did not aid and abet him, in his unlawful act, was not guilty, however intemperate may have been their speeches, and whatever may have been their general advice. The other side of this question, and the side taken by the prosecution and the court, is to say that John Brown's raid was a natural outgrowth of the republican party. If there had been no republican party there would have been no John Brown's raid, and therefore, that all republicans who made speeches, and believed in the Utopian idea of a change in society, for the benefit of a class, were like the anarchists, and were *particeps criminis* with old John Brown, and ought to be hung.

The days come and go, and this brief must be filed tomorrow, but it is not done. "The little foxes that spoil the vines" have got their work in every day, and have rendered greater progress impossible.

Therefore, I must refer your Honors to the able brief prepared by Mr. William P. Black and Messrs. Salomon and Zeisler upon the two questions of the impanelment of the jury and the instructions of the court.

"THEY WANT THEM ALL HANGED."

The considerate portion of the community want the plowshare of justice held with a firm but intelligent hand,

and that it plow straight through—that the defendants should be hung if guilty of murder, but not hung if not guilty of murder.

The man at his business, over-anxious and over-worked, sees in the movement of these people simply an interruption, and he wants them hanged to get rid of the question. The timid lady shivers with fear, and says: “Why, they will, if released, throw bombs through our windows, and blow up our houses.” The hard-hearted and the exacting want to continue their oppressions and exactions, and they want them all hanged. All these want them hanged, not for the reason that it is known they have been guilty of murder, but because the fixed order of things by these agitations is disturbed. “Don’t Carnegie’s men at Pittsburgh get more a day than Krupp’s men in Europe?” “Yes,” and Krupp’s men in Europe get more than men in Central Africa. All mankind are moving to a higher plane, and it is harder and more difficult to grind the face of the poor than it was formerly.

The labor that moves the world may not, as a class, be the most intelligent. It may not know *how*. Like a man fastened face downward and stretched out to stakes on the grass of the western plains by Indians, he bears it until his nervous system gives way, when he will shriek and struggle, knowing there is a sore place somewhere. We are building school houses to teach the children of labor better and how.

Virginia wanted John Brown hung that she might fold her arms and sleep in peace. She did hang him and his companions, but she did not sleep in peace.

These men are strangers in our land, houseless and homeless, and yet I have never before seen the hard hand of toil respond with its quarters of a dollar and little gifts

here, there, everywhere, and with such wide-spread sympathy—until these poverty-stricken defendants have larger and readier means of defense than any persons I have ever defended or known. Criminals, under such circumstances, would have shared the fate of the neglected and the poor. What does this mean?

We all remember the celebrated controversy between the wind and the sun, told by old Æsop, in which the two entered into a debate as to which was the stronger, and it was to be decided by an attack upon a traveler upon whom they were looking down, and the victor should be he who could make him take off a great-coat he was wearing first. The wind tried it, and blew about him and made him shiver and his coat-tails flutter, but he only hugged it the closer. The sun finally took its turn. It came out with its warm and peaceful rays. It warmed the glebe and the man, and very soon he began to wipe the sweat from his brow and pulled off his coat. Maybe we can learn something from this simple story which has come down the ages from a period in the world's history in which labor was at complete rest.

The truth is, a man wants more than he used to want. He may labor, he may live in a hut, but whenever he sees other people have comforts he wants them for himself. We never want and long for what we do not know to exist. The wealthy cannot have luxuries without letting the poor know it. A workman cannot walk at night by the house well warmed and full of brightness and good cheer without wishing it were his own home. The wife of the workman will see the wife of his employer and envy her. His daughter cannot, as she works at the market-price of labor, but sigh "for something better than she has known," and think, as she

trudges to her sewing machine, how much nicer it would be to go to a piano. Humanity lies in a pyramid and every man and woman envies the man or woman next higher. Even the apex man is not content. "Uneasy lies the head that wears the crown." And yet the greatest hopes of humanity rest in the fact that all its classes and individuals are always and everywhere bearing

" A banner with the strange device,
Excelsior."

The truth is, the peoples of the world are inseparably linked together. Mankind are brothers, and they are held together as the world itself is held; you cannot, without breaking things, produce the elevation of the mountain without lifting up the country adjoining. The rich hold in exclusiveness, by a doubtful tenure, all the delights, the honors and the excitements of life, so long as the millions enjoy only a heritage of unenlightened labor and unrewarded toil. We must either all go back to barbarism, where equality and contentment reign, or the rich must lift up the poor in proportion as they themselves are lifted up.

Let, therefore, the man of wealth, instead of barricading the doors of his home, and seeking shelter in bars and bolts and iron gates, take his basket of overflowing plenty upon his arm and seek out the homes of squalor and want and find his safety and the safety of his home in the universal brotherhood of man.

CHICAGO, March 1, 1887.

LEONARD SWETT,
Of Counsel for the Defendants.

